

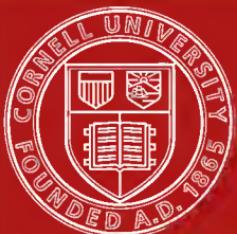


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A DIGEST OF CASES
DECIDED IN THE
SHERIFF COURTS OF SCOTLAND.

A DIGEST OF CASES

DECIDED IN THE

SHERIFF COURTS OF SCOTLAND

AND REPORTED IN

THE SHERIFF COURT REPORTS, 1905-1914

(VOLUMES 21 TO 30).

COMPILED BY

GEORGE GUTHRIE, M.A., LL.B.,

WRITER, GLASGOW.

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PREFATORY NOTE.



In bringing down this Digest for another ten years the lines of that which was published in 1906 have been followed, with but little change. Few suggestions have been received for its improvement; and the absence of such, together with communications of positive approval, has assured the compiler and publishers that on the whole its form has been found serviceable.

No attempt has been made in the Digest to follow the cases further than the Sheriff Courts; the reports themselves, the Supreme Court reports, and the agents may be referred to in the instances where further information is desired.

The terms of the original rubrics, not having always been designed to stand by themselves, have been freely altered, with the view of bringing out the salient points of the cases, but at the same time compression has been aimed at and attained. Repetition of rubrics under different heads has been largely avoided by the free insertion of cross references. The sub-divisions of the larger heads are not intended to be logical or exhaustive categories, but they may be found convenient in seeking cases. The cases on a given point are generally arranged according to date.

The title *Reparation* is limited to claims founded on delict and *quasi-delict*, breaches of obligation being included under the contracts, relationships, and other categories which are apposite; and decisions on Railway Carriage appear under Carrier. The Workmen's Compensation Act has a title to itself, having little, if any, affinity to *Reparation*, Master and Servant, or anything else legal.

As it is recognised that reports of law cases are in some instances merely illustrative and in others largely so, statement of fact in such instances must preponderate so much over the legal content as to be obnoxious to the strict jurist; nevertheless, reports of this kind are deemed by many persons to have their uses, and, accordingly, appear in some numbers in the Sheriff Court Reports and this Digest.

On consideration and balancing of advantages it has been thought not necessary to incorporate the ten-year Digest for 1905-14 with the twenty-year Digest published in 1906.

GLASGOW, November, 1915.

DIGEST OF CASES.

The case references are to the volume and page of the Sheriff Court Reports. Where there are subheads a case digested under one subhead may also be appropriate to another subhead, and no cross-references are made between subheads.

Abandonment. *See EXPENSES II., PROCESS IV., VIII., IX., SMALL DEBT ACTS.*

Absolute Disposition. *See RIGHT IN SECURITY.*

Abuse of Process. *See REPARATION IV.*

Accident. *See INSURANCE, RAILWAY, REPARATION, ROAD, WORKMEN'S COMPENSATION ACT IV.*

Accounting. *See also BURGH, FORTHCOMING, PROCESS VI., RIGHT IN SECURITY, SMALL DEBT ACTS.*

*Competency and relevancy—Master and servant—Account sued for to be made from pursuers' own books.—A registered provident society sued its sometime chief salesman and treasurer, two months after he had left its employment (which had lasted for fourteen years), for an account of his whole intromissions, alleging a large deficit ascertained from its books kept by him. Held that the action was incompetent and irrelevant. *Govan Old Victualling Society, Limited v Wagstaff*, 21, 289.*

*Competency—Principal and agent—Auctioneers' duty to keep accounts for their canvasser.—In an action for accounting, in which the pursuer, who produced no account, alleged himself to have been an "agent and canvasser" for the defendants, who were live stock auctioneers, held that the defendants were not bound to keep or render an account of what business the pursuer introduced to them; and action dismissed. *M'Callum v Macdonald, Fraser, & Co., Limited*, 29, 87.*

Acquirenda. *See BANKRUPTCY IV.*

Administration of Justice. *See BANKRUPTCY IV. (b), SHERIFF.*

Administration, Right of. *See HUSBAND AND WIFE.*

Admiralty. *See SHIP.*

Adoption. *See CONTRACT III., SLANDER.*

Adulteration. *See PUBLIC HEALTH.*

Advance Note. *See SHIP V.*

Advertisement. *See CONTRACT II., III., PUBLIC HEALTH, RIGHT IN SECURITY.*

Affiliation. *See BASTARD.*

Affreightment. *See SHIP I.; also CARRIAGE, CONTRACT III.*

Agency. *See also ACCOUNTING, ASSESSMENT III., CARRIAGE II. (b), (d), CONTRACT III., EXPENSES, HUSBAND AND WIFE I., IV., LAW AGENT, LOAN, MASTER AND SERVANT I., PARTNERSHIP, PROCESS I., IV., VIII., X., SHIP V., WAGER.*

I. Constitution of Contract,	page 2
II. Rights, Powers, and Duties of Parties,	" 3
III. Commission,	" 3

I. Constitution of Contract.

Club steward—Liability of members for merchant's account.—

A club steward was bound to cater for the members, who individually paid him for their supplies, and he kept the profits. *Held* in an action against the club for meat supplied that the steward was not by legal presumption or in fact an agent having authority to bind the club. *Lindsay v Royal Perth Golfing Society and County and City Club, 26, 337.*

House agent—Employment and introduction—Commission on sale.—A person was introduced by a house agent to the proprietor of a heritable property who was seeking for a purchaser, and gave the proprietor an offer, which was too low. Two years elapsed, during which the parties were in touch with the house agent, and a sale was ultimately concluded between the proprietor and the former offerer without the house agent's knowledge, and at a higher price. *Held* (rev. Sheriff-Substitute) that in the circumstances the agent was entitled to commission from the proprietor, upon the ground of introduction though not of sale. *M'Allister v Douglas, 22, 31.*

Housekeeper praesepita—Daughter.—A father committed his housekeeping to his daughter without expressing to outsiders any limitations of her authority, and he paid her a weekly allowance for the housekeeping. She spent much of the allowance otherwise, and ran up an account with a grocer, who had reason to expect that the credit given would be met. *Held* that the father was liable for the grocer's account. *Morrison v M'Phail, 23, 122.*

Person undertaking to cash cheque—Duty to account—Validity of counter claims.—The niece and housekeeper of one who died had got assignations of life insurance policies from him in respect of her services, and on his death his executor received from her the cheques for the contents of the policies to cash for her. Though the executor could not show that the deceased was insolvent, he, being also one of the deceased's creditors, retained the proceeds of the cheques

Agency: Constitution of Contract—continued.

as due to the deceased's creditors, and not due to the niece, she being conjunct and confident with the deceased. *Held*, in an action by her against him for the cash received for the cheques, that the defender received them and it as the pursuer's agent for a specific purpose, and could not retain the money in another character. *Kelly v Kelly*, 26, 161.

II. Rights, Powers, and Duties of Parties.

Accountant—Authority limited by condition.—*Held* that an accountant, authorised to get a bill protested and to have sequestration taken out against the debtors therein, if the holders were put to no expense, did not bind the holders to pay the account of law agents employed by him for the sequestration proceedings, who were not informed of the condition as to expense. *Kay & Kinloch v Henderson & Son*, 25, 207.

Auctioneer—Liability to seller for price of goods rejected by purchaser—Conditions of sale.—Auctioneers received from a farmer for sale some heifers in calf, and sold and delivered them, classed as "coming to time." One heifer was rejected as not fulfilling the condition, and, her price not having been received by the auctioneers, she was re-sold for a less price. In an action by the farmer for the first price, *held* that the auctioneers fulfilled their contract if they re-delivered the heifer or paid the reduced price to the farmer, their conditions of sale enabling them to deliver sold stock to the purchaser before receiving the price. *Taylor v Lawrie & Symington*, 22, 44.

Auctioneer—Right to payment from purchaser—Title to sue.—Auctioneers delivered a cow to a purchaser at a roup on the faith of it being paid for. *Held* that, by law and their special conditions of sale, they could sue for the price, and that, as by the conditions they were not responsible for warranties, a defence based on warranty was irrelevant. *Swan & Sons, Limited v Fyfe*, 22, 190.

Auctioneer entrusted with goods—Title to sue for price.—By arrangement between (1) a householder about to sell his furniture on going abroad, (2) his auctioneer, and (3) a prospective bidder at the roup, the bidder was allowed a fortnight after the sale to pay for what he might buy, but failed at that date to pay, and was sued by the auctioneer. *Held* that the auctioneer, having had possession of the goods, and being interested in the price for recovery of his charges, had a title to sue. *Collins v Patterson*, 28, 83.

III. Commission.

Betting commission agent—Relevancy of claim—Specification—Costs.—In an action by a betting commission agent against a client for recovery of a sum for bets made on his behalf, *held*, though the action was competent, that the pursuer's averments were irrelevant from want of specification, and

Agency: Commission—continued.

action dismissed without expenses to the defender. Warwick v Bannatyne, 29, 328.

Commercial traveller—Authority to grant long credit.—A commercial traveller, having power (known to the defender to be limited) to give no more than six months' credit, sold goods to the defender at twelve months' credit, saying he would make it right with his principals. They invoiced the goods, however, on their usual terms, and eventually sued for the prices. *Held* that they were entitled to decree, with interest, after the six months of credit, the defender having bought the goods with his eyes open. *Main & Co. v Young, 23, 295.*

House factor—Liability for repairs ordered.—House factors, without disclosing their principal, contracted "on behalf of the proprietor" with painters to do work on houses under their charge. When sued for the price they disclosed their principal and disclaimed liability. *Held* that they were liable as principals, the pursuers having chosen to sue them. *Kettle, &c. v Pearson & Co., 27, 176.*

Law agent—Liability for undisclosed principal—Agent known to be such.—Circumstances in which it was *held* (rev. Sheriff-Substitute) that law agents, who had accepted on behalf of "our clients" (undisclosed and unknown to the offerer) a builder's offer for the erection of certain subjects, incurred no personal liability. *Opinion*, that one who contracts as an agent, at least or especially where it is his known business to act as an agent, is not liable, apart from usage, merely because he does not in the contract, or at the time of the contract, disclose his principal's name. *Muir v Turnbull & Findlay, 22, 324.*

Agent and Client. *See EXPENSES, LAW AGENT.*

Agreement. *See CONTRACT, the Nominate Contracts, STAMP.*

Agricultural Holdings Acts. *See LEASE II., VI., PROCESS VIII.*

Alien. *See ELECTION.*

Aliens Act, 1905.

Expulsion order—Complaint and procedure.—Form of complaint by a Parish Council and procedure thereon for obtaining Sheriff's certificate applicable to an alien pauper lunatic, preparatory to an expulsion order under sec. 3 (1) of the Aliens Act of 1905. *Glasgow Parish Council v Lorenzo, 22, 206.*

Aliment. *See also ARRESTMENT II., IV., BASTARD, CHURCH, DONATION, HUSBAND AND WIFE I., IMPRISONMENT, LUNATIC, MEDITATIO FUGÆ, PARENT AND CHILD, PROCESS VII., SMALL DEBT ACTS, SUCCESSION, TITLE TO SUE, VITIOUS INTROMITTER, WORKMEN'S COMPENSATION ACT V. (e).*

Father's obligation—Legitimate daughter of age—Sufficiency of offer of entertainment in father's house.—The unmarried

Aliment—*continued.*

daughter of a parish minister, who was of age and resided with her father, brought an action against him for aliment. *Held* (*rev. Sheriff-Substitute*) that, as she was being maintained beyond want in her father's house, and averred no reason sufficient in law for claiming a separate maintenance, her averments were irrelevant; and the action *dismissed*. *A v B*, 22, 15.

Father's obligation—*Claim constituted by decree—Ranking in bankruptcy for natural obligation.*—A wife in an action of divorce obtained decree, and was awarded the custody of the child of the marriage, the husband being ordained to pay to her “£35 yearly as aliment for the said child . . . so long as the said child shall be unable to earn a livelihood and shall remain in the custody of the pursuer.” *Held*, in an action by the wife against her divorced husband's trustee in bankruptcy for a dividend on the capitalised value of the award of aliment, that her averments were not relevant to entitle her to a ranking *quoad futurum*, in respect that the claim, like its ground, the decree, was for aliment of a legitimate child, and was therefore not a debt. *Question*—If it was a debt, whether, being contingent, it was capable of valuation? *Barnes v Tosh*, 29, 340.

Mother's obligation—Right to repayment from father—Presumption of her liability.—A mother, whose husband quarrelled with and lived apart from her, maintained minor children, unassisted by the husband, but did not bargain with him for repayment or intimate to him a claim of relief. *Held* that on a small succession opening to the husband she had no right of repetition against him, being herself liable *subsidiarie*, and being presumed to have made the advances *ex pietate*. *Kennedy v Kennedy*, 27, 183.

Husband and wife—Cruelty—Disowning child—Unsuitable and unhappy home.—*Held* that averments by a wife (1) that her husband denied his paternity of a child born soon after marriage; (2) that he had not provided a suitable house for their residence; and (3) that his relatives lived with the spouses, and ill-treated the wife, were not sufficient averments of cruelty, and action for aliment *held* irrelevant. *C v B*, 28, 217.

Amendment. *See* PROCESS VI., TITLE TO SUE.

Appeal. *See* PROCESS VII., VIII.; also ARRESTMENT V., DEBTS RECOVERY ACT II., EXPENSES, POLICE II., IV., PUBLIC HEALTH, SHIP IV., WORKMEN'S COMPENSATION ACT V.

Apprentice. *See* MASTER AND SERVANT.

Arbitration. *See also* CONTRACT, LEASE II., VI., REPARATION I., WORKMEN'S COMPENSATION ACT V.

Arbiter unnamed—Nomination by Court—Scope of reference—Definition by arbiter or by Court—Arbitration (Scotland)

Arbitration—continued.

Act, 1894.—An architect claimed, for services in connection with buildings erected for his employer, fees for additional and special work, in addition to the commission on the cost of the work already paid to him. His employer disputed his right to these, and, in the course of correspondence, offered to refer the matter to “some one to be mutually agreed upon.” This offer was accepted, but the architect claimed right to re-state his whole account to the arbiter, while his employer maintained that all that it was agreed to refer was the disputed items, and refused to concur in the nomination of an arbiter *quoad ultra*. The architect then petitioned the Sheriff to nominate an arbiter to determine the amount payable “in terms of the agreement to refer the same mentioned in the correspondence,” i.e., in the correspondence. *Held* that there was a completed agreement to refer the items in dispute only; and *opinion* that, although in the normal case the scope of the reference is a matter for the decision of the arbiter in the first place, in the present circumstances this fell to be defined by the Court. *Alison v Blenkhorn*, 23, 208.

Arbiter unnamed—No person indicated—Insurance policy—Arbitration (Scotland) Act, 1894, 57 & 58 Vict. cap. 12, sec. 1.—A clause in a policy of insurance in the following terms, viz.:—“If any difference or dispute of any kind whatsoever shall arise between the assured and the corporation, the same shall be referred to arbitration in accordance with the provisions of the Arbitration Act, 1889, or the Arbitration (Scotland) Act, 1894, as the case may be, and an award given in favour of the assured in such an arbitration shall be a condition precedent to any right of action against the corporation in respect of such difference or dispute,” held to be a valid clause of reference, and action by the insured *sisted* till an award should be procured. *Hughes v Car and General Insurance Corporation, Ltd.*, 23, 282.

Building contract—Architect's certificate for instalments as distinguished from award.—Observations on the effect to be given to an architect's certificate for payment of an instalment under a building contract, which bore that the work was to be done to the entire satisfaction of the architect, and that any dispute arising connected with the contract should be referred to him, his decision to be final and binding on both parties without appeal. *Muir v Turnbull & Findlay*, 22, 324.

Exclusion of action—Building contract—Architect waived as arbiter.—In an action for the balance of the price of alterations and repairs on a building, the Court remitted, in virtue of a clause of reference in the contract, to the person designated as the arbiter, viz., the architect, to determine the matters at issue between the parties. The defendant declined to proceed under the remit, and ultimately a proof at large was allowed in the action, and taken, without appeal by either party. *Held* that the pursuers, by acquiescing in

Arbitration—continued.

the proof, were barred from pleading that the jurisdiction was excluded by the reference clause, or that a measurement made by the architect (who was also measurer under the contract), and sworn to by him in the proof, was conclusive. *Craig & Tannahill v Stewart*, 21, 295.

Exclusion of action—Dispute to be settled under rules of association—Common form arbitration not provided for.—Contracts for the sale of goods bore that any dispute under them was “to be settled” under the rules of an association, which applied to many other matters than arbitration, and did not contemplate submission to one or two arbiters. *Held* that such a clause did not import an arbitration, or, if it did, it and the rules did not bring the Arbitration Act of 1894 into operation, and the law Courts were not ousted. *M'Connell & Reid v Smith*, 27, 189.

Exclusion of action—Dispute.—An action to recover a sum due under a contract in which there was a clause of arbitration covering the settlement of accounts *sisted* to await the result of an arbitration in terms of the contract, even though the defence was a bare refusal to admit the correctness of the pursuers’ accounts. *Midland and Textile Insurance Co., Ltd. v Mercantile and General Insurance Co., Ltd.*, 29, 228.

Exclusion of action—Railway company's Act—Arbitration waived.—A railway company's Act of Parliament, dealing with transactions between the company and traders requiring carriage of goods over its lines, enacted that “any difference arising under this section shall be determined by an arbitrator to be appointed at the instance of either party.” The company sued a trader for a payment in respect of matters falling within the section, but neither party claimed arbitration or pled want of jurisdiction in the Sheriff. *Held* by him that arbitration was a privilege not here exercised, and not ousting the Sheriff. *Glasgow and South-Western Railway Co. v Polquhairn Coal Co., Ltd.*, 30, 266.

Reduction of award—Averment that proof refused—Specification of evidence tendered.—In an action for payment of sums found due under an arbitration award, the defender pleaded that the arbiter had refused to hear his and his witnesses’ evidence in support of his claims against the pursuer, and that he was therefore entitled to have the award set aside by way of exception, but he did not aver the facts which the witnesses would have established, or state their names, or when and where they were tendered and rejected. *Held* that, the arbiter having taken what proof he deemed necessary for the decision of the matters in dispute, no relevant case had been stated for setting aside his award. *M'Crone v Preston*, 21, 79.

Valuation—Devolution on oversman without writing.—In a valuation of an outgoing farm tenant’s dung, where the arbiters and oversman were appointed in writing, and the oversman signed their minute appointing him, *held* that

Arbitration—continued.

on the arbiters differing, no written statement that they differed or written devolution on the oversman was necessary. *French v Durham*, 27, 77.

Architect. See ARBITRATION, CONTRACT III.

Arrestment. See also ASSESSMENT I., COMPANY, DEBTS RECOVERY ACT, EXPENSES I., LAW AGENT, LEASE IV., V., PROCESS IV., WORKMEN'S COMPENSATION ACT V. (b).

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I. Founding Jurisdiction.

Competency—Action to determine status.—An application for letters of arrestment *ad fundandam jurisdictionem* in contemplation of an action for separation and aliment between spouses held incompetent. *Holt v Holt*, 25, 112.

Competency—Uncalled capital in company.—An objection to the jurisdiction said to have been founded against a joint stock company by arresting in the hands of a shareholder the amount unpaid on his shares, but yet uncalled, on the ground that the arrestment was incompetent, *sustained*, and action dismissed. *Lindsay v Martona Rubber Estates, Limited*, 28, 76.

Competency—Sum consigned in Court—Arrestee designed as payee.—In an action for payment of money the defenders admitted liability for a certain sum, which they consigned in Court. The pursuers obtained decree, and an order was granted to the Clerk of Court to pay the consigned money to them. A third party then laid arrestments in the hands of the Clerk of Court against the pursuers *ad fundandam jurisdictionem*, and brought an action of damages. Held, applying *Shankland & Co. v M'Gildowny*, 1913, S.C. 857, that the arrestment founded jurisdiction. *Scottish Iron and Steel Co., Ltd. v Gillieaux & Collinet*, 30, 42.

Competency—Warrant requiring caution judicio sisti—Nexus.—Held that a form of letters of arrestment or a precept for arrestment issuing from the Sheriff Court, *ad fundandam jurisdictionem*, which required caution to be found *judicio sisti*, was not inept or improper; and opinion that such an arrestment created a *nexus* on the subjects arrested until appearance was entered to defend. *Summers & Co. v Roberts & Cooper, Ltd.*, 30, 332.

II. Competency generally.

Alimentary action.—Opinion that arrestment is competent on the dependence of an action by a wife against her husband

Arrestment: Competency generally—continued.

for decree of separation and future aliment, if a case of approaching insolvency or intention to flee the country is stated. *Johnson v Johnson*, 26, 134.

Debt due by bill.—*Held* in an action of forthcoming that an arrestee—who had accepted bills to a common debtor, which bills, current when the arrestment was laid on, had become past due while the forthcoming was pending, but had not been presented—was bound to answer to an arresting creditor for the amount represented by the bills. *Evans v Pinchere, &c.,* 23, 111.

Police pension—Exemption—Police Act, 1890, sec. 7 (1).—*Held* that a pension payable to one as having been a police constable was not arrestable even by alimentary creditors, inasmuch as “securities over” such pensions are void by statute. *Borthwick v M'Ritchie, &c.*, 24, 374.

Police pledge.—*Held* that a sum which was deposited with a superintendent of police by a person apprehended as a pledge for his appearance, and which was not forfeited on account of his non-appearance, was subject to arrestment by a creditor of the person apprehended. *Suter Hartmann & Rahtjen's Composition Co., Ltd. v Gillespie*, 24, 207.

Reporting.—Where in a forthcoming there was no evidence as to the reporting of the preceding arrestment to the Sheriff-clerk, in terms of rule 127 appended to the Sheriff Courts Act of 1907, an objection to the competency repelled, in view of no consequences being attached to the omission to report an arrestment on a decree. *Macintyre v Caledonian Railway Co., &c.*, 25, 329.

Reporting.—*Held* that arrests used on 17th July and not reported to the clerk of Court till 6th August were null, not having been reported forthwith as required by rule 127 annexed to the Sheriff Courts Act of 1907. *Johnson v Johnson*, 26, 134.

Reporting.—*Held* that the pursuer in a forthcoming, who had arrested on the dependence on 18th December, 1908, and failed to report the execution of arrestment until 31st May, 1909, was, by non-observance of the statutory direction duly to report, barred from recourse against any fund that might have been attached. *Observations on the Sheriff Courts Act, 1907, rule 127. A B, &c. v E F*, 26, 172.

Service by hand and by post—Interval before postal service—Sheriff Courts Act, 1876, sec. 12 (5).—The execution of an arrestment on a certain date, which was not served personally, bore that a copy had also been sent through the post, but the date of posting showed that it had been delayed. *Held* that the arrestment was not therefore invalid. *Question whether sec. 12 (5) of the Sheriff Courts Act of 1876 applied to the Debts Recovery Court. Hart, jun., &c. v Grant & Wylie, &c.*, 23, 186.

Service personal—Corporation—Branch office.—*Held*, extending *Campbell v Watson's Trustee*, 1898, 25 R. 690, that an

Arrestment: Competency generally—continued.

arrestment by handing a schedule to a servant of a corporation within one of its branch places of business was effectual as personal service upon the corporation, and rendered unnecessary the posting of a schedule to the corporation, in terms of rule 126 appended to the Sheriff Courts Act of 1907. *Macintyre v Caledonian Railway Co., &c., 25, 329.*

Specification of moveables to be attached—Statutory form.

An arrestment in common form held not to have attached slates on the premises of the arrestees, which they could not distinguish from the slates of others, of which the owner and quantity were unknown to them, and for which they could at the time make no storage charge. *Macintyre v Caledonian Railway Co., &c., 25, 329.*

Statutory form—Inept schedule.—In a forthcoming an arrestment held invalid, as the schedule served on the arrestee was not conform to the statutory form, or to the execution, and did not describe the subjects arrested—the words “belonging to the defender” having been omitted after mention of the effects. *Marshall & Sons v Robertson, &c., 21, 243.*
Statutory form—Inept schedule—Wrong reference to warrant.

—A claimed a preference in respect of an arrestment. He had obtained a decree on 23rd October, 1903, containing warrant to arrest. The schedule of arrestment was lodged in the hands of the arrestee on 11th July, 1905, and purported to proceed on a warrant to arrest contained in a Small Debt decree dated 23rd October, 1905, at A's instance against the common debtor. There was no such decree. Held that the arrestment was inept. *Grant v Rattray, &c., 23, 115.*

III. Effect.

Arrestee trustee for creditors and himself.—Where A, being a creditor of B & Co. and also their adviser, sold their business, and, instead of setting the whole proceeds against his claim by retention or compensation, invited the whole creditors of B & Co. to accept a dividend along with himself, held that a creditor, lodging an arrestment in A's hands which was not affected by other arrestments or by bankruptcy, was preferable to the other creditors, including A—he being accountable to B & Co. for the fund by his own choice. *Duckworth & Co. v Liddle, &c., 26, 118.*

Competition with right of compensation or retention.—A, being dismissed from his employment, was offered the balance of salary due to him as at the date of his dismissal plus one month's salary in lieu of notice; but he refused to accept the sum offered, and raised an action against his employers for a much larger sum, on the ground that his engagement did not expire until about two years after the date on which he was dismissed. In this action the employers were assailed, and found entitled to modified

Arrestment: Effect—continued.

expenses, the amount of which, as taxed, exceeded the sum due to A at the date of his dismissal for salary earned and in lieu of notice. On the day following that on which the summons at A's instance had been signedet, a creditor of A had used arrestments in the hands of his employers on the dependence of an action against him, and, having obtained decree in this action, the creditor brought an action of furthcoming against A's employers. *Held* (1) that the arrestments had attached the sum due to A by the arrestees at the date when he was dismissed; but (2) that the arrestees were entitled to set off against this sum the expenses to which they had been found entitled in the action at A's instance. *Lennie v Mackie & Co., &c., 23, 85.*

Competition with claim of property—Public sale of moveables—Bar of purchaser by allowing reputed ownership of common debtor to stand.—Creditors of an insolvent arrested the price payable for goods sold at the roup of his effects, and in a multiplepoinding the insolvent's brother also claimed the price, in respect that he had bought the effects from the insolvent prior to the roup, although he had instructed the roup to proceed in the insolvent's name. *Held* that the arresters were preferable, the other claimant being barred by having allowed the reputed ownership of the insolvent to stand. *Cairns v Cook, &c., 23, 118.*

IV. Wages.

Farm servant—Arrestment on dependence of alimentary action—Restriction.—*Held* that an arrestment of a farm servant's wages on the dependence of an action against him for inlying expenses and the aliment of an illegitimate child, not being excepted by sec. 4 of the Wages Arrestment Act of 1870, fell to be restricted to the surplus over £1 a week, and to the amount thereof which the pursuer could, if successful, claim as at the date of arrestment. *Harkness v Williamson, 21, 85.*

Golfing-green keeper doing supplementary trade.—The green-keeper and "professional" of a golfing club received 15s. a week as wages, and, in the season at least, made additional profit by selling clubs and balls. An arrestment was lodged against his wages. *Held*, in a furthcoming following thereon, that he was a workman, and was not deprived of the protection afforded to "workpeople" by the Wages Arrestment Limitation Act of 1870, by his making the said additional profits. *Auchterlonie v M'Kelvie, &c., 24, 130.*

Music-hall artiste's salary—Arrestment on dependence of Small Debt action—Wages Arrestment Act, 1845.—*Held* that a music-hall artiste's weekly salary was "wages" within the meaning of the Wages Arrestment Act, 1845, and therefore not arrestable on the dependence of a Small Debt action; and recall of arrestment granted. *Locke v Chard, 24, 305.*

Arrestment: Wages—continued.

Sequestration of common debtor—Subsequent earnings.—*Held* that wages earned by a bankrupt subsequent to the date of his sequestration were not liable to arrestment by a prior creditor. *Parish Council of Glasgow v Steel Co. of Scotland, &c.,* 24, 37.

Vanman-salesman's commission—Wages Arrestment Limitation Act, 1870.—*Held* that the commission earned and paid daily for goods sold by a vanman-salesman was not wages, and was therefore not protected from arrestment, but that an arrestment attached only the commission earned for the day when it was executed. *M'Aulay v Smith, &c.,* 30, 162.

V. Recall.

Grounds of loosing.—*Held* that in exercising discretion to recall arrestments on the dependence of an action for accounting, the Court is not limited to considering statements in pleadings, but may take into consideration all circumstances judicially known to the Court, and bearing upon the application for recall. *Observations on the granting and recall of arrestment on the dependence.* *Uden v Burrell,* 30, 224.

Jurisdiction—Debtors Act, 1838—Reconvention—Appeal.—The defenders, a Glasgow firm, having obtained decree against an Alloa debtor in the Small Debt Court there, and arrested his funds in Lanarkshire, the debtor applied in the Sheriff Court at Alloa for recall of the arrestment, on the ground that certain of the statements in the schedule of arrestment were incorrect, and were at variance with the execution. *Held* (1) that, as the action brought by the defenders was wholly disposed of, they were not subject to the jurisdiction of the Court at Alloa *ex reconventione*, but that in terms of the Debtors Act, 1838, the Sheriff there could recall an arrestment used under his warrant; (2) that the arrestment was invalid; and (3) that appeal to the Sheriff was competent against a refusal of the Sheriff-Substitute to recall the arrestment. *Irvine v Gow & Sons,* 26, 174.

Separation and aliment—Appeal.—Arrestment on the dependence in an action of separation and aliment is competent, but special circumstances are required to support it. *Opinion* as to the competency of appeal to the Sheriff-Principal in an application for recall under sec. 21 of the Personal Diligence Act, 1838. *Kennedy v Kennedy,* 27, 71.

Unnecessary and unreasonable arrestments.—Circumstances in which arrestments used on the dependence of an action for damages were recalled as oppressive. *Dick & Parker v Langloan Iron and Chemical Co., Ltd.,* 21, 139.

Wages—Competency and necessity of petition for recall—Wages Arrestment Limitation Act, 1870.—*Held*, it not being disputed that the only sums arrested in the hands of an arrestee were wages not amounting to 20s. per week, that

Arrestment: Recall—continued.

a petition to recall the arrestment was competent. *Opinion* that it was not incumbent on an employer to take the risk of his employee's wages of every kind being not more than 20s. per week, and to pay him in face of an arrestment; *rev. Sheriff-Substitute*, who thought employer must pay protected amount. *Grier v Fraser*, 25, 140.

VI. Furtheoming.

Competency—Supersession by multiplepoinding.—An action for furthcoming of an arrested sum of money held not superseded by, or liable to be sisted in respect of, a subsequent multiplepoinding raised by the arrestee, who could not aver diligence by creditors other than the pursuer of the furthcoming, or any other double distress. *Ross, &c. v Brunton, &c.*, 30, 141.

Proof of arrestee's debt—Reference to oath of common debtor.—In the course of his defence to an action of furthcoming the arrestee pleaded that no debt was due by him to the common debtor at the time of the arrestments founded on, and he referred the fact of indebtedness to the oath of the common debtor. *Held* that in the circumstances a reference by the arrestee to the oath of the common debtor was inadmissible, and proof allowed. *M'Aulay v Smith, &c.*, 30, 162.

Assault. *See CRIME, PROPERTY, REPARATION I.*

Assessment. *See also BANKRUPTCY III., BURGH, CHURCH, EVIDENCE, POLICE II., IV., PUBLIC HEALTH, ROAD II., VALUATION OF LANDS.*

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I. Levy.

Burgh rates—Action or summary warrant.—*Opinion* that a burgh in recovering rates was entitled to abandon either an action or a summary warrant instituted by it, and proceed by the other form of action committed to it by sec. 353 of the Burgh Police Act, 1892. *Provost, &c., of Kilmarnock v Sloan*, 30, 238.

Deduction to owners collecting—Scale—House Letting and Rating Act, 1911, sec. 7 (6).—In an application to fix the scale of deduction to be allowed by an assessing authority within burgh in respect of the collection by owners of the rates due by occupiers of dwelling-houses with a yearly rental not exceeding £10, scale fixed, but decision as to application thereof reserved. *Main, &c. v Airdrie, Coatbridge, and District Water Trustees*, 30, 105.

Public health rate—Expenses in Government inquiry.—At an inquiry by the Local Government Board into the conduct of a burgh medical officer and the matron of a hospital,

Assessment: Levy—continued.

these parties instructed and were assisted and represented by lawyers at some expense. The local health authority passed part of these expenses as charges on the public health rate. In an action by a ratepayer for interdict of their levying such charges from him, *held* that the charges passed were not proper expenses of the local authority, and that it was *ultra vires* of them to assess for them or to pay them out of the rate; and interdict granted. *Lindsay v Provost, &c., of Coatbridge*, 30, 317.

School rate—Misapplication—Competency of defence to rating.

—A proprietor of lands objected to the levy of school rate on him, stating grounds implying misapplication of the rates when collected. In a Small Debt action for payment defence *repelled* as irrelevant—the remedies being a declarator and interdict, or a petition to the Sheriff under sec. 23 of the Education Act of 1908. *Lochbroom Parish Council v Matheson*, 30, 22.

Summary warrant—Arrestment—Hired article—Burgh Police Act, 1892, sec. 353.

—Where the hirer of a piano had failed to pay his burgh rates, *held* that the burgh authorities were not authorised by the Burgh Police Act, 1892, sec. 353, to arrest the piano under summary warrant in the possession of a railway company to whom the hirer had handed it. *North British Railway Co. v Provost, &c., of Helensburgh*, 24, 310.

Water rate—Deduction to owners collecting—Assessing authority—Statutory water trust—House Letting and Rating Act, 1911, sec. 7 (6).

—An application was made to fix the scale of deduction from water rates, to cover the cost of collection of occupiers' rates by the owners of dwelling-houses, rented or valued at more than £10 but not more than £15 yearly, within two burghs. Their local Acts provided for collection from owners of houses at £10 and under, without allowance. *Opinion* that the 1911 Act instituted an allowance for all "small" dwellings; and *held* that a statutory trust was an "assessing authority" bound to allow deduction; and that the petition was competent; but same *continued* for further procedure in respect houses up to £10 were not before the Court. *Airdrie, Coatbridge, and District Water Trustees, petitioners*, 30, 101.

Water rate—Deduction for collecting occupiers' rates—Rating authorised without allowance—Water Works Clauses Act, 1847, sec. 72—House Letting Act, 1911, secs. 7 (6) and 13.

—In an action to recover a sum of money in respect of water rates, which was retained by the defender, a house owner, as his commission for the collection of the rates on rents not exceeding £10, *held* that, as the rates were imposed by a statute (saved from the House Letting Act of 1911) which made owners collect the rates without allowance, he was entitled to no commission, and decree granted. *Observed* on a construction of the rating Act that these rates were rather owners' than occupiers' rates. *Airdrie*,

Assessment: Levy—continued.

Coatbridge, and District Water Trustees v Warren, 30, 107.

Water rate—Double charge—Public Health Act, 1897, sec. 126 (2).—The defender was owner and occupier of a stable and byre, and was rated thereon *qua* owner for special water assessment, but the local authority refused to accept from him the tenant's proportion of the assessment, and required him to enter into an agreement to pay trade charges for the water. The defender having refused, the local authority sought to interdict him from using water for other than domestic and sanitary purposes on the premises. *Held* that the local authority could not both levy an assessment on the defender as owner and charge him as occupier at trade rates for water supplied, and as they had elected to assess, the action was *dismissed*. *Western District Committee of Stirlingshire v Calder*, 23, 350.

Water rate—Double charge—Agreement—Public Health Act, 1897, sec. 126 (2).—The defender was assessed for water supply on the rental of premises (including dwelling-house and garden) owned and occupied by him. He was also separately charged for the use of a garden tap on the premises under an agreement made with him, which charge he had paid for several years. He refused to continue paying this charge, and was sued therefor. *Held* that the agreement did not entitle the local authority to evade the law (in the above-cited Act) forbidding double charging, and that as they had assessed for the water rate on the premises a further charge for water was not exigible, and defender *assailed*. *District Committee of the Lower Ward of Lanarkshire v Fleming*, 26, 86.

Water rate on shops—Special rate for non-domestic purposes—Arbroath Corporation Water Order, 1904.—Where a water supply authority, having power to charge for domestic supply by a rate on the annual value of the premises supplied, and for other supply either by measure or by a rate on one-fourth to one-half of the annual value, published a schedule applying to certain shops a rate on one-half value, *held* on appeal that a shopkeeper of the class scheduled contracted, by taking the supply, to pay the rate, which was higher than that for shops in general, and had acquiesced in it by not asking the Sheriff at the proper time to fix another rate. *Brown v Provost, &c., of Arbroath*, 25, 289.

II. Liability of Subjects.

Agricultural lands and heritages—Farm servants' dwellings—Agricultural Rates, &c., Act, 1896, sec. 1.—*Held*, in a question between the tenant of a farm and the Parish Council, that the abatement allowed by the Act for "heritages used for agricultural or pastoral purposes only" covered the case of a house intended for a farm servant, even where it was let to one not in service, if the farmer made no profit by the transaction, but paid an equal rent or allowance in

Assessment: Liability of Subjects—continued.

name of rent to the actual servant, who lived elsewhere.
Cuthbertson v Lanark Parish Council, 22, 268.

Burgh rates—Unoccupied subjects—Liability of owners—Sheriff.

—In an appeal by the owners of heritable property in a burgh where assessments had never been laid on the owners when they were not either in occupation or entitled to rent by reason of the property being let, held that the Sheriff could not entertain objections based on the exercise of the rating powers of the Town Council, and that the assessor's action in applying the rating powers and resolutions under the various rating statutes was not invalid, notwithstanding that the subjects were unoccupied. *Speirs & Knox v Corporation of Glasgow*, 25, 166.

Burgh rates—Unlet subjects—Liability of owners as defined by Valuation Act of 1854.—Held that the definition (or description) of "owners" in the Valuation Act as "persons who shall be in the actual receipt of the rents and profits" did not exempt from burgh rates persons entered on the valuation roll as owners who did not receive rents by reason of their subjects being unlet. *Barlow v Corporation of Glasgow*, 25, 179.**Cleansing rate—Private court—Glasgow Police Act, 1866, secs. 4 and 40.—Held that the proprietors of a tenement in Glasgow possessing a back court, which did not form a common access to lands and heritages separately occupied, were not liable to an assessment for cleansing purposes under sec. 40 of the Glasgow Police Act of 1866. *Mactaggart v Corporation of Glasgow*, 29, 220.****Lunacy rate—Railway line—Valuation at one-fourth—Glasgow Police Act, 1866, sec. 43—Lunacy Districts Act, 1887, sec. 5.—Held that the provision in the Lunacy Act of 1887 that the assessments for lunacy purposes are to be "collected and recovered" in like manner and under like powers as are applicable to the collection and recovery of, *inter alia*, burgh assessments, does not entitle railway companies to be assessed on only one-fourth of the annual value of the line of railway, as in the case of municipal rates under sec. 43 of the Police Act. *Caledonian Railway Co., &c. v Assessor of the City of Glasgow*, 23, 130.****Road rate—Exemption—Railway—Roads Act, 1878, sec. 86—Burgh Police Act, 1892, secs. 5 (2) and 347.—In an appeal by a railway company against an assessment by a burgh as local road authority for roads and streets rate upon the full value of its lines within the burgh, held, reading sec. 86 of the Roads Act of 1878 together with secs. 5 (2) and 347 of the Burgh Police Act of 1892, that the railway company was liable to be assessed on only one-fourth of the value of its lines in the burgh as shown by the valuation roll. *Glasgow and South-Western Railway Co., &c. v Ardrossan Town Council*, 22, 117.**

Assessment—continued.

III. Liability of Persons.

Occupier—*Burgh rates*—*Liability of tenant leaving premises empty*—*Valuation roll*.—The tenant of a shop in a burgh, who did not occupy the shop by himself or a sub-tenant, appeared on the valuation roll as tenant, and in the column for “occupier” there appeared the word “empty.” *Held*, on a construction of secs. 340 and 4 (21) of the Burgh Police Act of 1892, that the tenant was rightly assessed for the rates on occupier. *Main v Provost, &c., of Haddington*, 23, 248.

Owner—*Bondholder not in possession*—*Burgh rates*—*Valuation roll*—*Erroneous entry*.—Bondholders who had not entered into possession of the security subjects were entered in the valuation roll as proprietors thereof. In an appeal against a deliverance by the assessor and the assessment committee of the Corporation of Glasgow assessing them for burgh rates, *held* (1) that the appeal was competent, that the valuation roll was conclusive only on the question of “value,” and that the Sheriff was entitled to determine whether a person had been properly assessed, irrespective of the entry on the valuation roll; and (2) that bondholders not in possession were not “proprietors” under the definitions given in the Valuation of Lands (Scotland) Act, 1854, and the Glasgow Police Act, 1866, sec. 4. *Connell's Trustees v Glasgow Corporation*, 26, 127.

Owner—*Occupier's burgh rates*—*Lets for less than a year*.—The defenders were owners of houses in burgh let at rents of from £6 to £12 per annum under missives partly printed, partly written, few of them signed, and none of them stamped. These missives bore that the houses were let for a year, but the rent was payable weekly, and tenants who were one week in arrear could be evicted at the end of the following week. The burgh summoned the defenders for occupiers' rates, on the ground that the leases were not valid yearly lets, that the houses were let for less than a year, and that therefore under sec. 345 of the Burgh Police Act, 1892, the defenders, as owners, were liable. *Held* that the burgh was right, it being proved that half the tenants did not in fact occupy for even a year. *Provost, &c., of Helensburgh v Helensburgh Dwellings Co., Ltd.*, 21, 268.

Owner—*Occupier's poor and school rates*—*Houses let for less than one year*—*Poor Law Act*, 1845—*Valuation Act*, 1854, secs. 2 and 31—*Franchise Act*, 1884, sec. 9 (6).—Where a collector of rates sued the owner of houses for the owner's and occupier's shares of poor and school rates on these houses, which were let for periods of less than one year, *held* that the owner was liable only in the proportion of the rates assessable on owners. *Hogg v Braidwood*, 22, 236.

Owner—*Occupier's burgh rates*—*Lets for less than three months*—*Glasgow Police Act*, 1866.—*Held* that when subjects

Assessment: Liability of Persons—continued.

are let for a period less than three months the owner and not the occupier is liable in payment of the assessments imposed in respect thereof. *Anderson's Royal Polytechnic, Ltd. v Corporation of Glasgow*, 25, 181.

Owner—Factor's liability for burgh rates—Notice of assessment to factors chargeable—Burgh Police Act, 1892, sec. 352.—
Held that when a town council proposed to recover rates from factors as owners under the Burgh Police Act, sec. 345, it was not sufficient under sec. 352 of the Act to address the notice of assessment to the owners "per" the factors, but that notice must be given to the factors themselves. *Provost, &c., of Govan v Dick & Son*, 27, 73.

Owner—Granter of trust for creditors not divested.—Where an insolvent who owned heritable property in burgh, which was managed by factors, granted a trust deed for creditors, but the trustee never interfered with that property, and the factors continued to return the insolvent as owner to be entered on the valuation roll, *held* that he was liable for the burgh rates—not the trustee, who never took possession. *Observations* on the distinction between the position of a bankrupt sequestrated and a bankrupt granter of a trust for creditors in relation to his heritable property and the vesting of it in the trustee. *Provost, &c., of Kilmarnock v Sloan*, 30, 238.

Owner—Volunteers—Footway—Private improvement assessment—Drill hall—Crown—Sheriff—Volunteer Act, 1863, sec. 26—Burgh Police Act, 1903, sec. 100.—
Held that premises owned and occupied by a Volunteer company were owned and occupied by them as servants of the Crown, to the exclusion of the jurisdiction of Sheriff Courts. Further, that by statute Volunteer companies were exempt from private improvement expenses as well as from other assessments. *Provost, &c., of Helensburgh v Brock*, 21, 253.

IV. Preference.

Burgh rates—Landlord's hypothec—No bankruptcy—Burgh Police Act, 1892, sec. 370.—
Held that the terms of sec. 370 of the Burgh Police Act of 1892 did not give the rates therein mentioned a preference over the landlord's hypothec, when the only fact which could be called an indication of the ratepayer's bankruptcy or insolvency was a sequestration and sale for his unpaid rent, and that the burgh's claim upon the proceeds of sale could not be sustained. *Kirkcaldy Town Council v Patterson & Millar*, 21, 95.

Burgh rates—Glasgow police rates—Landlord's hypothec.—
Held, where a landlord in Glasgow had sequestrated and sold for arrears of rent, and the proceeds were in the hands of the officers of Court—the tenant not being proved bankrupt or insolvent—that the burgh police rates were not preferable to the landlord's right of hypothec, and the proceeds need not be made forthcoming to the rate collector. *Corporation of Glasgow v Brownlie & Robertson, &c.*, 30, 8.

Assessment: Preference—continued.

County rates—Crown preference—52 & 53 Vict. cap. 50, sec. 62 (5).—A landlord sequestering and selling his tenant's effects for rent in breach of the provisions of the Local Government Act, 1889, is liable for the tenant's unpaid county assessments for the current year. *County Council of Stirling, &c. v Stirlingshire Property Investment Co., Ltd.*, 24, 320.

County rates—Creditors in possession not assessed—Process of distribution—Local Government (Scotland) Act, 1889, sec. 62 (8).—Heritable creditors entered into possession of the security subjects under a decree of maills and duties. Thereafter the county council, having obtained decree against the proprietor for the rates assessed upon him, arrested the rents. The rents having by arrangement been paid over to a third party, the county council raised a multiplepoinding in his name, and in the competition claimed a preference over the fund *in medio* by virtue of the arrestment and sec. 62 (5) of the Local Government (Scotland) Act, 1889. Held that the heritable creditors were entitled to be ranked and preferred to the fund. *Allan v Reid, &c.*, 30, 340.

Poor and school rates—Landlords selling under hypothec—Extent of their liability.—In an action for recovery of the poor and school rates due by the tenant of a house against the landlords, who had sold the tenant's effects under a sequestration for rent, held, in accordance with sec. 7 of the Revenue Act, 1884, that the defenders were liable in payment of the whole rates, and that it was an irrelevant consideration that the sum realised by the sale was insufficient to pay the expenses of both sale and process. *Parish Council of Edinburgh v Hope Trust*, 27, 47.

Poor and school rates—Burgh rates.—Held that an arrestment of rents fell within the diligences enumerated in sec. 7 (2) of the Revenue Act, 1884, of which the Crown was entitled to take advantage so as to establish a preference; and that, as the Poor Law Act, 1845, and the Education Act, 1872, gave the collector of poor and school rates all the preferences of the Crown, the claim of that collector was preferable to that of a town council which had arrested rents under a warrant for recovery of burgh rates, and he could recover from the council rents made forthcoming to it. *Wood v Corporation of Glasgow*, 28, 91.

Poor rates—Arrears—Competition of heritable creditor and rate collector.—In an action of multiplepoinding, held that the poor and school rates in arrear for the year preceding that in which heritable creditors obtained decree in an action of maills and duties and began to collect the rents, were in a competition preferable by statute to the claim of the heritable creditors against the rents for the arrears of interest due to them. *Bow v Shaw, &c.*, 30, 138.

Taxes—Poor rates—Burgh rates.—Held, where a tenant's effects had been sequestered in respect of non-payment of his

Assessment: Preference—continued.

rent, that taxes, poor and school rates, and burgh rates were preferable, in the above order, to a claim by the landlord for the expenses of sequestering, in a competition as to the proceeds of sale of the effects. *Calder, &c. v Mackenzie, &c.*, 24, 375.

Assignation. *See also LAW AGENT, TITLE TO SUE.*

Competency—Sale contracts overdue—Delectus personæ.—Where two buyers of steel billets severally assigned to the Scottish Iron and Steel Company, Limited, two contracts with the defenders, both of which had been duly implemented by delivery, held that *delectus personæ* did not apply to prevent the assignations from taking effect and the assignees from founding on them. *Scottish Iron and Steel Co., Ltd. v Gillieaux & Collinet*, 30, 42.

Auction. *See AGENCY, SALE III.***Auctioneer.** *See ACCOUNTING, AGENCY, MULTIPLEPOINDING.*

Bankruptcy. *See also* ALIMENT, ARRESTMENT III., IV., ASSESSMENT III., IV., CAUTIONRY, CHURCH, COMPANY, ELECTION, EXPENSES I., LEASE IV., WORKMEN'S COMPENSATION ACT V. (b).

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I. Notour Bankruptcy.

Constitution—*Married woman not engaged in business in absence of husband—Debtors (Scotland) Act, 1880, sec. 6.*—*Held* (applying *Harvie v Smith*, 18th January, 1908) that sec. 6 of the Debtors Act of 1880 provided a means of making notour bankrupt a married woman not engaged in business in the absence of her husband, in respect of a debt which exceeded £8 6s. 8d. by including expenses. *Hendry v Veitch &c.*, 25, 46.

Equalisation of diligences—Expenses.—Circumstances in which held in a multiple poinding that the expenses of arresting, by which the fund *in medio* became available, were first charges thereon. *Provost, &c., of Lochgelly v Kilgour, &c.*, 21, 267.

Equalisation of diligences—Second constitution.—*Held* that, although notour bankruptcy at one date is consistent with a new constitution of notour bankruptcy at a later date, yet the later bankruptcy does not necessarily effect an equalising of diligence. *Grant v Rattray, &c.*, 23, 115.

Equalising of diligences—Fund consigned under poinding and sale—Bankruptcy Act, 1856, sec. 12—Claim by a judicial manager for a preference on the proceeds of sale.—A farmer disappeared on 10th April, deeply in debt. On 4th May, on the application of his landlady, a judicial manager was appointed. On 11th May the landlady obtained decree for arrears of rent. She also brought an action of ejection under the Agricultural Holdings Act, 1908, and on 28th May decree of removing was obtained and enforced to the extent of the farm, growing crops, and farmhouse and buildings, but the farmer's family and his stock and implements were allowed to remain meantime. A charge was given on the decree for rent, and the farmer became notour bankrupt on the expiry of the charge on 11th June. The landlady also executed a poinding of the stock and implements, and the

Bankruptcy : Notour Bankruptcy—continued.

poinded effects were sold under warrant of the Sheriff on 14th July. Other creditors holding liquid grounds of debt or decrees for payment thereupon lodged minutes as compearing creditors; and on their motion the landlady was ordered to consign the proceeds of sale in Court, which she did. The judicial manager incurred outlays to the extent of £152 5s. more than the funds retained by him, and he obtained decree therefor on 22nd March, 1911. Claims on the consigned funds were ordered. The judicial manager claimed a preference for the balance due to him. The landlady and the compearing creditors holding liquid grounds of debt or decrees for payment claimed a *pari passu* ranking under sec. 12 of the Bankruptcy Act, 1856. The compearing creditors objected to the claim for the judicial manager, on the grounds that he had not obtained a decree for payment within four months of the farmer's notour bankruptcy; that his claim should properly be against the landlady; that through the decree of ejection and the poinding and sale he had lost any possession which would have given him a right of retention; and that his claim was not one for the expenses of the poinding and sale. The Sheriff sustained the claims of the landlady and compearing creditors for a *pari passu* ranking on the consigned fund, and rejected the claim of the judicial manager for either a preferable or a *pari passu* ranking. *Stewart v Mair, &c.,* 27, 337.

Equalisation of diligences—Accountability of realising creditor—Remedy of direct action—Claimant neither poinder nor arrester.—Held that the equal right to rank on the proceeds of diligence against a notour bankrupt within sixty days before and four months after the date of bankruptcy is not confined to arresters and poinders, and that a creditor holding a liquid ground of debt could within the period sue for an accounting another creditor who had recovered payment under diligence, though the fund was not *in manibus curiae*, and the claimant simply held a decree against the bankrupt. *Scott & Son v Scott,* 30, 166.

II. Ranking and Claim therefor.

Claim of partner's wife—Firm's I O U signed by husband.—In the sequestrations of a firm and its two partners the wife of one partner claimed upon I O U's signed by her husband with the firm name. The trustee granted her a “contingent” ranking, meaning one postponed to those of the other creditors in observance of sec. 1 (4) of the Married Women's Property Act of 1881 as to money lent or entrusted by a wife to her husband. On appeal the Sheriff recalled the trustee's deliverance, and in respect the claimant was conjunct and confident with one of the partners, allowed her an opportunity to produce evidence in support of the I O U's. Observed that the claimant was not, in regard to the firm, under the statutory disability of a wife claiming in her husband's bankruptcy. *Lumsden v Sym,* 28, 168.

Bankruptcy: Ranking and Claim therefor—continued.

Compensation—Balancing in bankruptcy—Undisclosed principal—Future debt.—Timber brokers, who held ostensibly in their own names a cargo of timber, re-sold it also ostensibly in their own names and took a bill for the price in their own names. The buyer having become bankrupt during the currency of the bill, a debtor to the bankrupt estate pleaded that he was the real owner of the said cargo held by the brokers and sold to the bankrupt, and claimed to compensate the debt to the bankrupt estate by setting off the price of the timber so sold by his agents to the bankrupt. *Held entitled to compensate.* *Reid v M'Phun & Co., 23, 324.*

Double ranking—Lender and cautioner for limited amount.—A guarantor, after the bankruptcy of the principal debtor, paid to the bank (the lender) the amount of her guarantee, and the bank re-transferred to her stock pledged by her, but refused to grant an assignation of the debt to the extent of the sum paid. The guarantor and the bank lodged claims with the trustee, the bank for the full amount of its advances. The trustee rejected the guarantor's claim, and allowed the bank a ranking for the full amount of its claim. *Held, on appeal, that the guarantee being for a limited sum, and not for the whole debt that might become due to the bank, the guarantor was entitled to a ranking in the sequestration.* *Third, &c. v Ross's Trustee, &c., 22, 285.*

III. Preference.

Crown debt—Burgh rates—Workmen's wages—Landlord's hypothec.—In a cessio the bankrupt's landlord, who had not completed his preference by sale, competed as to a general balance in the trustee's hands with (a) the Postmaster-General, for telephone dues, (b) the burgh rate collector, for rates, (c) two workmen of the bankrupt, for recent wages, and (d) the pursuer of the cessio, for his expenses. By agreement the landlord submitted to judgment in this competition, and the workmen were given first preference. As to the others, *held that the Crown had first preference (following Galbraith, 5th February, 1910, 47 S.L.R. 529), that the burgh rates came next, and that expenses of cessio were preferable to the landlord's hypothec.* *Horne's Cessio, 29, 292.*

Illegal preference—1696, c. 5—Cheque to bankrupt endorsed and delivered to creditors within sixty days before bankruptcy.—Circumstances in which *held that the trustee on a sequestered estate was entitled to be preferred to a fund in medio, being the proceeds of the sale of trade stock sold by the bankrupt through auctioneers, whose cheques in the bankrupt's favour he had endorsed to his own law agents within sixty days of his sequestration.* *Kilpatrick & Wilson v Richmond, &c., 25, 202.*

Poinding—Small Debt poinding not followed by sale.—*Held that creditors who had, more than sixty days prior to*

Bankruptcy: Preference—continued.

sequestration, executed diligence against the estate of a bankrupt by pointing under a Small Debt decree, which was not followed by a sale, were entitled to a preferable ranking for the amount of their debt in the same way as if the decree and diligence had not been under the Small Debt Act. *Bendy Brothers, Ltd. v M'Alister*, 26, 152.

Privilege of servant's wages—Wages of carter.—The common debtor Graham was indebted to the claimant Robb, a carter, for wages under a Small Debt decree. Robb claimed to be ranked preferably on the fund *in medio* in a multiple-pointing for the whole of these wages. *Held* that he had only a preference for his wages for one week, being the current term under his employment, and that for the balance, being arrears, he was only entitled to be ranked *pari passu* with the other claimants on the balance of the fund *in medio*. *Provost, &c., of Lochgelly v Kilgour, &c.*, 21, 267.

Privilege of farm servant's wages—Arrears—Sequestration—Preferential Payments in Bankruptcy Act, 1888—Application to Scotland.—A farmer left his farm at Whitsunday without paying his servants' wages. The servants raised actions for payment a month later. The farmer's estates were sequestrated on 8th August following. The servants claimed preferences for wages up to the Whitsunday preceding the sequestration. The trustee rejected the claims to a preference, but allowed ordinary rankings. *Held*, on appeal, that the wages claimed were not "current" wages, and that as at common law only "current" wages were entitled to a preference, the appellants could not claim more than ordinary rankings. *Opinion* also that the Preferential Payments in Bankruptcy Act, 1888, did not apply to Scotland. *Miller, &c. v Smith*, 23, 223.

IV. Sequestration—(a) Procedure.

First meeting of creditors—Minutes.—Objection to the proceedings at the first meeting of creditors on the ground that the narrative of the minutes was written outwith the presence of the meeting, contrary to sec. 68 of the Bankruptcy Act, repelled. *Aitken's Sequestration*, 26, 165.

First meeting of creditors—Preses.—*Held* not necessary that the preses at the meeting of creditors held for the election of a trustee should be a creditor. *Aitken's Sequestration*, 26, 165.

Production of oath, &c., with petition.—*Held* that the requirement of sec. 21 of the Bankruptcy Act, 1856, that the creditor presenting a petition for sequestration "shall produce with such petition" an oath, account, and vouchers, "failing which production the petition shall be dismissed," was sufficiently complied with by lodging these papers on 27th January, before any deliverance was pronounced, though the petition itself had been lodged on 23rd January. *Muir's Sequestration*, 27, 327.

Bankruptcy—continued.**IV. Sequestration—(b) Voting and Claim therefor.**

Affidavit—Failure to connect bankrupt in oath with debt claimed for—Production of vouchers.—Where in an oath in a sequestration, founded on for voting purposes, the claimants had omitted to state in what way or on what ground the bankrupt was liable for the debt claimed for, and where they had also omitted to lodge any documents or vouchers instructing their claim as against the bankrupt, held that their vote must be disallowed. *Houston's Sequestration*, 21, 3.

Affidavit—Conjunct and confident claimant—Vouching of claim.—Circumstances in which (1) an affidavit by a stepson held good for voting, and (2) a holograph receipt dated more than a year before bankruptcy held a sufficient voucher for such a claim. *Arnott & Co.'s Sequestration*, 21, 328.

Affidavit—Amendment of oath for voting—Mandate—Stamp on foreign voucher.—Objection being taken to an oath of verity, in respect that it should have been an oath of credulity, held (1) that a motion for leave to amend was timeously made before the scrutiny of votes was entered upon; (2) that it was competent by amendment to convert an oath of verity into an oath of credulity; (3) that a general mandate to vote and act was sufficient to entitle an agent to make an oath of credulity; and (4) that receipts granted and stamped abroad for establishing a loan were sufficient vouchers as they stood. *Runciman's Sequestration*, 22, 288.

Affidavit—Competitor, a justice of the peace, putting on oath a voter for himself.—Doubted whether a competitor for the trusteeship in a sequestration, being a justice of the peace, could act as justice of the peace in putting on oath a person who was to vote for him. *Farquharson's Sequestration*, 22, 316.

Affidavit—Oath before practising solicitor.—In the competition for a trusteeship objection was taken on behalf of one competitor to certain votes cast for another competitor, that the oaths of the creditors were taken before a solicitor or procurator before the inferior Courts, while that solicitor was in business or practising in an inferior Court, contrary to sec. 27 of 6 Geo. IV. cap. 48. Objection sustained. *Farquharson's Sequestration*, 22, 316.

Affidavit—Valuation—Deduction of securities.—Objection was taken to a claim by creditors that they had not deducted sums alleged to be due by them to the bankrupt under decree of the Court of Session, but as an appeal to the House of Lords had been lodged, and no evidence was produced to instruct the alleged state of matters, objection repelled. *Aitken's Sequestration*, 26, 165.

Affidavit—Valuation—Deduction of sum consigned against claim.—Held that the seller of goods to the bankrupt must, when claiming in the sequestration, deduct as a payment to

Bankruptcy : Sequestration—Voting and Claim therefor—continued.

account of his claim for the price a sum voluntarily consigned by the buyer in bank in joint names of seller and buyer to await adjustment of the amount payable—consignation having divested the consignor. *Fairs' Sequestration*, 27, 200.

Voucher—Cheque.—*Held*, in a question of ranking in a sequestration, that in an account between auctioneers and a farmer, with receipts and disbursements on either side, cheques for payments by the auctioneers to the farmer were sufficient vouchers. *Cromb's Sequestration*, 23, 331.

Voucher—Conjunct and confident persons—Children's wages—Bill not supported.—In a competition for the office of trustee in a farmer's sequestration, votes were cast by (1) his seven children, who claimed a large sum for wages (not under agreement) earned while they lived in family with him and worked on his farm—*held* that their claims could not be admitted for the purpose of voting; and by (2) one who had had close association with the bankrupt, and latterly was grantee of a trust deed by him, and who claimed, on a recent bill, a renewal of a former bill for cash advanced, and on some I O U's, but the bill had not passed through a bank, and the circumstances of the debt were not deponed to—*held* that the claim was not sufficiently vouched. *Keegan's Sequestration*, 24, 146.

Voucher—Banker's claim for overdraft—Docquet by customer.—A bank's claim in respect of overdrafts by a customer gave a portion of the account claimed on and relative vouchers, but began with a “balance,” to which a copy docquet by the customer was prefixed. The bank did not produce the original docquet, and the copy docquet and the account were not verified in terms of the Bankers' Books Evidence Act, 1879. Claim rejected for voting. *Warden's Sequestration*, 24, 301.

Voucher—Banker's claim for overdraft—Docquet by customer—Vote on petitioner's oath.—A bank's claim in respect of an overdraft by its customer, now sequestrated, began with a “balance,” to which a copy of the customer's docquet acknowledging indebtedness for it was prefixed, and contained subsequent transactions, none of which were vouched by production of bills or cheques, and the original of the docquet was not produced. The copy docquet and account were not verified in terms of the Bankers' Books Evidence Act, 1879. Claim rejected for voting. *Observed* that a claim by an oath used for petitioning, and therefore omitting the usual words “at the date of the sequestration,” may be used, unaltered, for voting. *Maitland's Sequestration*, 28, 354.

Voucher—Renewed bill.—Where claimants in a sequestration produced as their vouchers bills renewed by the surviving partner of their debtor's firm between the date of that firm's dissolution by death and the date of sequestration of its

Bankruptcy: Sequestration—Voting and Claim therefor—continued.

estates, held that the renewed bills were good vouchers for voting. *Mitchell's Sequestration*, 25, 69.

Voucher—Lender to bankrupts for share of profits—Partnership Act, 1890, secs. 2 (d) and 3.—In a competition for the trusteeship in a sequestration, held that a claim by a creditor for the amount of a loan advanced to the bankrupts under an agreement which stipulated, *inter alia*, that the lender was to receive a share of the profits of the business, was invalid for voting purposes. *Crann & Co.'s Sequestration*, 25, 238.

Voucher—Claim for rent—Debt arising after bankrupt's death.

—In a competition for the trusteeship in a sequestration, held (following *Menzies v Duff*, 13 D. 1044) that a landlord must produce his lease as a voucher of his claim for rent, although the lease has expired and the tenant possesses by tacit relocation. *Opinion* that creditors are not entitled to vote on claims for debts incurred after the death of the bankrupt. *Williamson's Sequestration*, 28, 244.

IV. Sequestration—(e) Trustee.

Trustee—Personal disqualification—Candidate conjunct and confident and having adverse interest.—A candidate for the trusteeship in a sequestration held disqualified because (1) he was agent of a bank having an interest opposed to the general interests of the creditors, and (2) he was confident and conjunct with the bankrupt. *Finlayson's Sequestration*, 23, 314.

Trustee—Personal disqualification—Candidate confident with bankrupt and nominee of creditors hostile to general body.—In a competition for the office of trustee on a sequestered estate, the personal objection was stated to one of the competitors that he was the nominee of security holders, whose interests were inimical to those of the general body of the trade creditors, and whose single vote carried the election of trustee. The vote of the security holders (a limited company) was also objected to on the ground that they were conjunct and confident with the bankrupt in respect of close business relations existing between them and the bankrupt, being the advance of money to erect buildings, and the holding of the buildings, &c., as security therefor. The personal objection was repelled, and the vote of the security holders sustained. *Glass's Sequestration*, 24, 74.

Trustee—Personal disqualification—Candidates (1) legal adviser of party having interest adverse to general creditors, and (2) trustee for bankrupt, found ineligible—Appointment of judicial factor by Sheriff ex proprio motu.—A law agent who had been acting as legal adviser to a party who had an adverse interest to the general body of creditors, held disqualified as trustee. A person who was trustee under a unilateral trust deed granted by the bankrupt and not

Bankruptcy: Sequestration—Trustee—continued.

acceded to by creditors, and who had been intromitting with the estate, *held* disqualified as a trustee. Circumstances in which the Sheriff appointed a judicial factor *ex proprio motu*. *Todd's Sequestration*, 24, 160.

Trustee—Personal disqualification—Time for stating objection.

—*Held* that an objection to the personal eligibility of a nominee for the office of trustee is competent although not stated at the time of his nomination. *Observed* that an objection coming later should not be given effect to except on the ground of grave and palpable disqualification. *Warden's Sequestration*, 24, 301.

Trustee—Personal disqualification.—A candidate for the trusteeship *held* not disqualified because (1) he was the nominee of creditors who had a litigation pending between themselves and the bankrupt; (2) he had given evidence as an accountant in an action between these creditors and the bankrupt—on behalf of the creditors; and (3) he was a son of the law agent of these creditors. *Aitken's Sequestration*, 26, 165.**Trustee—Property of third party immixed with bankrupt's effects**

—*Reputed ownership—Sale by possessor's trustee in bankruptcy—Amount of liability.*—A son's bicycle was sold, along with the father's effects, by the latter's trustee in bankruptcy, without notice that the article was not the father's property. *Held*, in an action by the son against the trustee for the full value of the bicycle, that the trustee, being in *bona fide*, was liable in only the price it fetched. The son having given no notice of his claim, and the trustee having made no tender, neither *held* entitled to expenses. *Gorman v Winning*, 22, 321.

Trustee—Vesting—Spes successioonis—Title to interdict transaction with spes.—*Held* that a trustee in bankruptcy had no title to sue an action of interdict against a bankrupt and his wife to prevent them from dealing with a *spes successioonis* of the bankrupt. *Reid v Morison*, 1893, 20 R. 510, followed; *Obers v Paton's Trustees*, 1897, 24 R. 719, commented upon. *Winning v Chalmers*, 26, 332.
V. Cessio.**Competency—No assets.**—Circumstances in which the Sheriff Substitute granted decree of cessio on the petition of a debtor although there were practically no assets available for distribution among the creditors. *M'Gregor's Cessio*, 26, 28.**Expenses—Payment of debt.**—Where the debtor in a petition for cessio pays or tenders payment to his creditor before the first warrant is granted, the creditor's title and interest to proceed with the cessio are at an end, and if expenses have not been prayed for they cannot be granted on the petition. *Hunter & Co. v M'Laughlin*, 21, 273.**Expenses—Scale—Tender of debt before diet.**—*Held* that the expenses of cessio proceedings stopped by tender and con-

Bankruptcy : Cessio—continued.

signature of the debt before cessio was awarded fell to be charged under scale 1 of the Table of Fees annexed to the Act of Sederunt of 10th April, 1908. *Newby, Groves, & Meakin v Robertson*, 25, 244.

Expenses—Payment of debt.—A debtor, sued in a petition for cessio, paid the debt, after notice of cessio and the granting of the first deliverance on the petition. Held that, as in general, he must pay expenses; and a sum modified and decerned for. *Singleton & Cole v Lyon*, 29, 129.

Married Women's Acts—Cessio of married woman living with her husband.—Held that the estates of a married woman, who carried on business by herself but who was living with her husband, were liable to the process of *cessio bonorum* at the instance of her creditors, she having been made notour bankrupt by a poinding of her moveables following on an expired charge upon a decree against her. *Cadbury Brothers, Ltd. v Wallace*, 22, 248.

Notice of examination—Publication in “Gazette”—Computation of time.—Held that publication in the *Gazette* of 15th October of notice that a defender would be examined in cessio on 25th October did not comply with an order for publication ten days prior to the date of the examination; and intimation ordered of new. *Barr & Co., Ltd. v Tedesco*, 29, 251.

Process—Discharge of petitioner's debt—Sisting new pursuer.
—Held (affirming Sheriff-Substitute) that, though the claim of the pursuer of a cessio had been settled, other creditors of the debtor might insist on the process going on. *Flynn's Cessio*, 25, 103.

Sheriff's discretion in granting.—Circumstances in which cessio granted on a creditor's petition, although the debtor had no funds, and a composition was offered on condition of the petition being withdrawn—the other creditors being all absent. *Baird v Dick*, 22, 229.

VI. TRUST FOR CREDITORS.

Accession—Limitation of claim to dividend.—Averments held irrelevant to constitute accession inferring discharge of the claim so far as exceeding the amount of dividend under the trust for creditors. *R H v A B*, 23, 213.

Accountability of voluntary trustee to trustee in sequestration for mismanagement.—A trustee under a private trust deed for creditors allowed the bankrupt to carry on his farm without proper supervision, until after a petition for sequestration was presented by a non-acceding creditor. In an action by the trustee in the sequestration, held that the trustee under the trust deed was liable in damages for negligent administration. Held further that a trustee under a private trust deed, who sold the bankrupt's stock after a petition for sequestration had been presented, was liable for a loss caused to the estate by the sale, notwithstanding that his trust deed had

Bankruptcy: Trust for Creditors—continued.

stood for sixty days, in respect that he knew or must be presumed to have known of the sequestration proceedings, and that his title would be superseded on sequestration being granted. *Houston v Sale*, 25, 25.

Arrangement—Discharge of trustee.—A trader died insolvent, and his creditors, including the pursuers, made, in conjunction with his executrix, an arrangement with the superior of his property, who had a preference excluding them from sharing in the estate, whereby a dividend was forthcoming. The pursuers refused to discharge in full the executrix, who had wound up the estate under the arrangement, and sued her for payment. *Held* that she must be assuaged—by the Sheriff-Substitute on the ground that the pursuers had adopted the arrangement, by the Sheriff-Principal on the ground that they had acceded to a trust managed by the executrix, of which she must be fully discharged by the creditors. *Horton & Ritchie v Walker*, 25, 83.

Ranking—Rejection of claims by trustee—Subsequent separate action of constitution.—Creditors of one who had granted a trust deed for creditors acceded to it in writing. It provided for ranking according to the rules of the bankruptcy statutes. These creditors failed to prove their claims to the trustee and to appeal against his deliverances rejecting them. *Held* that they were not precluded from raising an action against the trustee and the trustee to constitute their claims. *Crerar v Dow, &c.*, 22, 311.

Stipulation for discharge of trustee—Non-acceding creditor.—Where a debtor had executed a trust deed for behoof of his creditors, *held* (1) that a creditor who had not acceded to the trust was not bound to discharge the trustee of his actings under the trust deed, and (2) that the creditor was entitled to a share of the trust estate in proportion to his debt, unconditionally. *Mitchell v Thomson*, 28, 210.

VII. Discharge of Bankrupt.

Composition—Radical right—Objection by partner of bankrupt firm.—*Held* that a partner of a bankrupt company has no right to interfere in a composition contract between the company's creditors and another partner for the winding up of the company's sequestration. *M'Intyre Brothers' Sequestration*, 26, 241.

Deed of arrangement—Computation of consenting creditors—Reasonableness.—A deed of arrangement between a sequestered bankrupt and his creditors came up for approval by the Sheriff. Certain creditors' claims failed to value and deduct the credit to be allowed under statute for securities or for co-obligants' undertakings; seven days granted them for rectifying their claims before beginning to compute the statutory majorities of creditors. The deed having been thereafter found duly executed by the statutory majorities, *held* that it was, however, not reasonable, in respect that it

Bankruptcy: Discharge of Bankrupt—continued.

disclosed a payment by friends of the bankrupt, from funds no part of his estate, to a consenting creditor, which constituted a preference to her struck at by sec. 150 of the Bankruptcy Act, 1856. *Tait's Sequestration*, 29, 94.

Dividend of 5s. per £1—Non-compliance with statutes.—Circumstances where, in view of adverse reports by the trustee in a sequestration, and by the Accountant of Court, and of the non-payment of 5s. in the £1, the Court in its discretion refused to discharge a bankrupt who had been five years under sequestration, though no objectors appeared. *M'Coll's Sequestration*, 29, 278.

Dividend of 5s. per £ unpaid—Speculations in stocks—Bankruptcy Act, 1913, sec. 146.—A bankrupt whose estate had been sequestrated in 1911, and had paid a dividend of only 1s. 2d. per £, applied for discharge at the end of two years from the date of sequestration. The discharge was objected to by one of his creditors. The statutory reports of the Accountant of Court and of the trustee were favourable. Circumstances in which the Sheriff *held* that the bankrupt had not shown that he was not responsible for the failure to pay 5s. in the £, and further consideration *deferred* for a fixed period, to give the bankrupt an opportunity of paying the requisite dividend. *Clark, petitioner*, 30, 183.

Effect—Personal obligation under contract of ground annual.—*Held* that a personal obligation in a contract of ground annual to pay the annual sum is discharged by discharge in bankruptcy of the obligant. *Shaw, &c. v Emery*, 24, 333.

Expenses unpaid—Bankrupt's application for sequestration.—A bankrupt's application for discharge, unobjected to on other grounds, was *refused hoc statu* when his estate and he himself had not provided for the expense of sequestering and the trustee's expenses. He had himself petitioned for his sequestration. *M'Carter v Aikman*, 20 R. 1090, followed. *Bathgate's Sequestration*, 30, 158.

Bastard. See also CRIME, DONATION, JURISDICTION, LAW AGENT, MEDITATIO FUGÆ, POOR III., PROMISE, VITIOUS INTROMISSION.

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I. Constitution of Claim.

Admission of paternity by payment.—In an action by a woman for aliment to her illegitimate child, *held* that the paternity and the amount of aliment were instructed solely and sufficiently by proof of four payments, each for a year and of £12, made by the defender to the pursuer, and not explained to be other than for the child's aliment. *Young v Elliot*, 21, 12.

Bastard: Constitution of Claim—continued.

Proof—Opportunity of connection.—In an action for filiation and aliment, where previous acts of connection were admitted, the pursuer averred that the parties met and had connection about the period of conception at a place and time named. *Held*, after proof, that, in respect that the pursuer had failed to prove that she and the defender had met as averred, the defender was entitled to be assoilzied. *M'Ferran v Popple*, 22, 275.

Proof—Defender's averment disproved.—Circumstances in which it was held that the pursuer had proved her case in the absence of courtship or familiarities, and where the defender denied the central fact in the case, which was sworn to by the pursuer, corroborated by one witness. *Macleod v Toole*, 23, 128.

Proof—Averments of pursuer's intercourse with other men—Specification.—*Held* that averments by a defender in an action of affiliation "that during 1905 and the earlier half of the year 1906 the pursuer was keeping company with several young men in the neighbourhood, whose names are to the defender unknown, with whom she was in the habit of having carnal connection in or about Guay station and the belt of wood near Guay station," was defective in specification, and could not be admitted to probation. *Observations on Barr v Bain*, 23 R. 1090. *Butter v M'Laren*, 23, 357.

Proof—Short gestation—Onus of proof.—*Proof allowed* in an action of affiliation and aliment, where the first act of intercourse averred was only 196 days before the date of birth, and there was no averment as to the child bearing signs of being premature. *Observations on the nature of proof in paternity cases. A v B*, 28, 113.

Proof—Admitted intercourse earlier than in due course—Discharge of onus.—*Held* (rev. Sheriff-Substitute) that, where a man admitted sexual intercourse with the mother of an illegitimate child shortly before the dates of connection stated on record as those resulting in the conception, and the woman swore connection was continued after the admitted dates, and it was proved that no change of circumstances occurred to make that continuation unlikely, the man's paternity was established. *Reid v Storry*, 28, 326.

Proof—Classification of evidence—Observations as to the classes of evidence available in cases of this nature. *Keir v Hall*, 30, 48.

Proof—Relevancy—Averring dates of connection.—A woman having brought an action for aliment of an illegitimate child, born eleven years previously, in which she averred frequent connection with the defender previous to the birth of the child, but did not name any occasions of its occurrence, and the defender, while admitting connection, having refused to resume payment of aliment which he had paid for some years, held that, in the circumstances, the action was relevant, and proof allowed. *Tolan v Stewart*, 30, 280.

Bastard—continued.

II. Offer by Father.

Decree for aliment current—Offer refused.—The mother of an illegitimate male child, after litigation and proof, got decree against the putative father, who denied the paternity, for twelve years' aliment of the child. After paying aliment till the child was seven years old, the putative father offered to take it into his custody. *Held* that he was not entitled to an acceptance of his offer or to relief from the decree by refusal of his offer, pending the period of the decree and in view of his denial of the paternity. *Balfour v Fairweather*, 22, 231.

Either parent unobjectionable.—Where the mother of a male illegitimate child, just over seven years old, charged the father for small arrears of aliment on a decree for fourteen years' aliment, and applied for his imprisonment, *held* that his previous offer to take the child into his own family was a sufficient answer to the application—the father being a steady man, married, and with a comfortable home and four other children, and the mother being also respectably married. *Murrie v McCallum* 27, 160.

III. Amount and Duration of Award.

Inlying expenses—Deduction of maternity benefit—National Insurance Act, 1911, sec. 18 (1) and (2).—*Held* that the defender in an action for filiation and aliment was not entitled to claim deduction from inlying expenses decerned for of maternity benefit paid to the parish affording shelter to the mother. *Gordon v Cochran*, jun., 30, 213.

Major child becoming indigent.—A woman whose birth was illegitimate, and had long been self-supporting, and her mother as having recently maintained her, sued the father for aliment and for repayment of aliment respectively in two actions. *Held* that in neither was there a relevant ground of action. Opinion of Lord Watson in *Clarke v Carfin Coal Co.*, 27th July, 1891, A.C. 412; 18 R. (H.L.) 63, applied. *Archibald v Wilkin*, 27, 313.

Reservation of father's right—Duration of aliment.—A decree for fourteen years having been craved by the pursuer in an action for aliment of a male bastard, *opinion* that decree for fourteen years could competently be granted, but decree for only seven meantime given, reserving the pursuer's rights thereafter. *Poland v Grierson*, 25, 56.

Reservation of father's right.—*Decided* that aliment should at the outset only be granted for seven years in the case of a male child, in view of the father's right to maintain thereafter. *Lawrie v Clingan*, 25, 110.

Reservation of father's right.—*Held*, in an action at the instance of the mother of an illegitimate female child against the father, that decree ought to be granted against the father for payment of aliment for fourteen years from the

Bastard: Amount and Duration of Award—continued.

date of the birth of the child or until the child should be able to support herself, under reservation of the father's right to make application to the Court to make other arrangements for the upbringing of the child. *Dobbie v Miller*, 26, 220.

Reservation of father's right.—Circumstances in which *held* in Perthshire that decree ought to be given for aliment of a female child until it attained ten years of age, and, in the special circumstances, at the rate current in the place in which the child resided, and which the father, who had been residing in the same place, had been paying. But right was reserved to claim further aliment at the same rate, and the father's right to claim custody was also reserved. *Gill v Henderson*, 30, 120.

Reservation of father's right.—In an action for affiliation and aliment in the Sheriff Court at Glasgow at the instance of the mother of an illegitimate male child, in which the defender admitted the paternity, but pleaded that he was liable to pay aliment for only seven years, *held* that decree ought to be granted against the father for payment of aliment for fourteen years from the date of the birth of the child, or until the child should be able to support himself, under reservation of the father's right to apply to the Court to make other arrangements for the upbringing of the child. *Stivens v Innes*, 30, 228.

IV. Expenses.

Admission of facts previously denied.—*Opinion*, that where previous acts of connection are denied by a defender on record, but admitted at the proof, the pursuer is in any event entitled to the expense of proving them. *M'Ferran v Popple*, 22, 275.

Paternity admitted.—In an action raised for the inlying charges and aliment for an illegitimate child, *held* that, as the defender had already admitted paternity and paid the inlying expenses and first quarter's aliment, he was not bound to relieve the pursuer of expenses incurred in judicially constituting her claim, but in the circumstances was entitled to modified expenses against the pursuer. *Harris v Todd*, 21, 308.

Bill of Exchange. *See also CAUTIONRY, INTEREST, LOAN.*

Cheque—Assignation in drawee's hands—Extent of assignation.—Upon 14th November cheques were presented against £20 lying at the credit on bank account current of insolvents, whose estates were sequestered on 15th December. Three of these cheques were for £50, £3 11s. 1d., and £4 13s. respectively, and none of them was paid. In a multiple-pointing the holders of the cheques and the trustee in the sequestration claimed. It was found that at presentation only £1 11s. 8d. was due to the holder of the £50 cheque,

Bill of Exchange—continued.

the balance being not yet due; that £3 11s. 1d. was due to the holder of the £3 11s. 1d. cheque, and that nothing was due to the holder of the third cheque. These creditors were *ranked* for these sums in virtue of the assignation effected by presentation of the cheques, and the trustee was *ranked* for the balance of the fund. *Commercial Bank of Scotland v Lyon, &c.*, 25, 312.

Making—Alteration in name of drawer after acceptance—Vitiating.—*Held* that an alteration in the name of the drawers of a bill, to the effect of deleting the word “ Limited ” after the descriptive name of a firm and the addition of the name of the person carrying on business under the descriptive name, was not a material alteration, and did not vitiate the bill. *Exchange Loan Co., &c. v MacGregor & Campbell*, 21, 285.

Making—Joint-stock company—Acceptance signed by secretary—Authority to sign.—*Held* that the secretary of a joint-stock company must, *prima facie*, be presumed to be authorised by the company to sign bills for it, in accordance with sec. 47 of the Companies Act, 1862. *Commercial Bank of Scotland, Ltd. v Fraser, Ross, & Co., Ltd.*, 22, 169.

Making—Acceptance by company—Company's regulations—Presumption of regularity.—The pursuers became holders of a bill of exchange purporting to be accepted for the defenders, a limited joint stock company, by their secretary and one of their directors. The defenders' articles of association provided that “ the directors should have power to regulate the manner in which documents not requiring the seal of the company should be executed.” The defenders pleaded that the acceptance on the bill was not in an approved form or binding on them. *Held*—the company having power to grant bills—that the pursuers were entitled to assume that the granting, and the preliminaries thereto prescribed by its articles, had been lawfully carried through, and that the bill was duly accepted. *Royal Bank of Scotland v Clyde Salvage Co., Ltd.*, 25, 91.

Negotiation—Presentment for payment—Note payable at bank—Effect of presentment to maker at bank named, but outwith knowledge of bank officials.—A promissory note bearing to be payable at a certain bank was there presented to the maker for payment, but at his request the ordinary form of tendering to the banker was dispensed with. *Held* that, in a question with him, the note was duly presented, and that his representatives were barred from pleading that the note was not presented. *Cairns v Cairns*, 24, 27.

Negotiation—Notice of dishonour—Accommodation party.—*Held* that the drawer and endorser of an accommodation bill was, in a question with the discounter and holder, an “ accommodation party,” and was therefore barred from pleading discharge in respect of failure to notify dishonour to him. *M'Lelland v Mackay*, 24, 157.

Bill of Exchange—continued.

Negotiation—Transfer without endorsement but for value—Bills of Exchange Act, 1882, sec. 31 (4).—The drawer and holder of a bill granted for value transferred it, after maturity and without endorsement, in acknowledgment of and as security for funds which he received for investment and did not account for. In an action for payment by the transferee against the acceptor, held that the transferee, having given value for the bill, was entitled to recover payment from the acceptor. *Wilkie v Sturrock*, 26, 339.

Parole evidence—Agreement to renew for definite period—Bills of Exchange Act, 1882, sec. 100.—The defender purchased a piano from the pursuers, and granted a bill for the price. The pursuers sued on the bill, and in defence the defender pleaded that if the piano was unsold at maturity of the bill the pursuers had agreed either to take back the piano or renew the bill for six months. Held that the agreement alleged by the defender was a fact relating to a bill of exchange relevant to a question of liability thereon, and might be proved by parole evidence. *Samuel & Sons, Ltd. v Gibson*, 22, 187.

Parole evidence—Discharge—Proof of payment—Bills of Exchange Act, 1882, sec. 100.—Held (following *Robertson v Thomson*, 3 F. 5) that payment of the contents of a bill of exchange can be proved only by writ or oath. *Cairns v Cairns*, 24, 27.

Parole evidence—Writ of holder's agent qualifying bill—Bills of Exchange Act, 1882, 45 & 46 Vict. cap. 61, sec. 100.—Contemporaneously with the granting of a bill for value, the drawer's law agent handed to the acceptor a letter, holograph of the agent, stating that the drawer was not to discount the bill, but instalments convenient to the acceptor would be taken, and the bill would be renewed at maturity (six months thereafter) for the balance. No instalments were paid, the drawer died, and his executors sued the acceptor after maturity. Held (1) that the bill could be qualified only by writ of the drawer, (2) that the lawyer's letter was not writ of the drawer, (3) that parole evidence to set up as such writ a letter so contradictory of the bill itself, as the defender pled that it was, was incompetent, and (4) that, no instalments having been paid during the currency of the bill, it was exigible in full after maturity. *Penny's Trustees v Clark*, 24, 202.

Parole evidence—Liability to pay—Proof that acceptors mere cautioners—Bills of Exchange Act, 1882, sec. 100.—Acceptors of a bill of exchange not allowed to prove in an action by the holder against them that they were mere cautioners—to contradict what their signatures showed, viz., that they were parties to the bill. *Exchange Loan Co., &c. v M'Aweeney, &c.*, 24, 217.

Bill of Lading. See SHIP I.

Births Register. See PUBLIC RECORDS.

Bower. *See DEBTS RECOVERY ACT I., HIRING I.*

Burgh. *See also ASSESSMENT, DAMAGE BY RIOT, ELECTION, EVIDENCE, FRANCHISE, NUISANCE, POLICE, REPARATION II. (a), III. (b), IV., ROAD.*

Accounts—Audit—Objection by elector—Common good.—*Held*, in an application to the Sheriff by certain electors of Glasgow, that the applicants were entitled to exhibition of the accounts relating to the “Common Good” of the burgh, after audit thereof, and that the accounts should be stated with such fulness of detail as to afford the electors fair opportunity to examine and criticise them, and to complain of any item therein to the Sheriff; and *opinion*, on a construction of the enactments, that vouchers might be called for. *Eadie, &c. v Corporation of Glasgow*, 30, 198.

Bye-laws—Confirmation by Sheriff—Amendment.—In an application for the confirmation of bye-laws passed under the Burgh Police Acts, 1892-1911, *held* that a Sheriff must either allow or disallow the proposed bye-laws, and cannot amend them. Grounds upon which a Sheriff is entitled to disallow bye-laws submitted to him, and confirmation of a clause refused accordingly. *Biggar Town Council, Petitioners*, 28, 348.

Bye-laws with regard to places of public refreshment—Confirmation—Kinds of refreshment places.—*Held* that the local authority has power to discriminate between different classes of business, and to exempt temperance hotels from regulations applicable to places of public refreshment. *Provost, &c., of Dundee, Petitioners*, 29, 49.

Bye-laws—Confirmation by Sheriff.—*Held* that the Sheriff confirming bye-laws made under the Burgh Police Act, 1892, and amending statutes, is not limited to the consideration of whether they are or are not *ultra vires*, nor to allowing or disallowing the bye-laws *in toto*, but that he may make any modification which falls within the ambit of the bye-laws as presented. *Provost, &c., of Dundee, Petitioners*, 29, 49.

Bye-laws confirmation—Refreshment rooms—Sheriff.—*Held*, in confirming bye-laws of the town council of a burgh for the regulation of places for public refreshment, that the Sheriff’s province was limited to the matters of *ultra vires* or unreasonable exercise of the regulating powers granted to the local authority by Parliament, which must be deemed to have dealt with the matters of public inconvenience and individual hardship, and to have left the matter of expediency to the local authority. *Provost, &c., of Hawick, Petitioners*, 29, 273.

Election of magistrates—Due appointment of bailies—Sheriff—Town Councils Act of 1900, secs. 59 and 113.—Where it was sought to correct an election of bailies in a burgh, which was made in due time and duly minuted, but not, it was averred, in due fulfilment of the burgh standing orders and the law, *held* that, without previous reduction of the minutes, an application to the Sheriff for correction of the

Burgh—continued.

election under secs. 59 and 113 of the Act cited was incompetent. *Smart, &c. v Provost, &c., of Buckhaven, Methil, and Innerleven*, 30, 328.

Extension of boundaries—Compensation to county—Interest.—The boundaries of a burgh having been extended so as to include part of the adjoining county, and the county having applied for adjustment of its financial claims against the burgh consequent thereon, held (1) that compensation could not be given for mere loss of rating area; (2) that compensation was exigible, in respect of a hospital and county offices, to the extent that the county was prejudiced by the transference of the area now annexed to the burgh; (3) that no sufficient ground had been shown for awarding compensation in respect of the salaries of certain officials; and (4) that interest should be awarded at 3½ per cent. from the date of the Act confirming the Order. *County Council of Stirlingshire v Magistrates of Grangemouth*, 22, 215.

Extension of boundaries—Burghal character of addendum—Expenses.—A burgh having plenty of unbuilt-on ground within its boundaries petitioned for inclusion of about four acres containing a distillery and about an acre of unbuilt-on ground. The distillery was seated there because ground for it could not be got in the burgh, and was accommodated by the burgh with sewerage and roads, but not with water. Held that, on the whole, the ground was of a burghal character, and should, in the circumstances, be included in the burgh, notwithstanding the opposition of the council of the county in which it was then situated. Held that no expenses should be allowed to either party. *Rothes Town Council v Elgin County Council*, 23, 147.

Paving of common areas—“Bleaching green”—Burgh Police (Scotland) Act, 1903, sec. 21.—Held, in an appeal against an order by a town council requiring the owners to pave a common court attached to a tenement, that where the court had been originally laid down in grass and intended for a bleaching green, but there was no evidence that it had ever been used as such, and it had for some time prior to the service of the notice been almost bare of grass, and very muddy in wet weather and unfit for use as a bleaching green, it did not fall within the exception of a bleaching green stated in the said sec. 21. *City and Suburban Property Investment Co., Ltd. v Provost, &c., of Govan*, 23, 163.

Shop Hours Act, 1904 (4 Ed. VII. cap. 31)—Trades included in closing order—Dairy shop selling other than dairy products.—An order of burgh magistrates under the Shop Hours Act of 1904 fixed the hour for closing grocers' and provision merchants' and bakers' shops at 8 p.m. Held that the keeper of a “dairy” (a shop for selling dairy products) was entitled to keep it open after 8 p.m. for selling articles appropriate to a dairy business, although he professed to be also a baker and a grocer and provision merchant, and must cease at that hour the sale of articles

Burgh—continued.

appropriate to the latter businesses. Further held that bread and potted meat were articles of the latter class, but cheese was a dairy product and saleable after 8 p.m. without infringement of the order. *Fyfe v Hamilton*, 22, 358.

Stair lighting—Control by police authority—Burgh Police Act, 1892, secs. 104 and 105.—Held that under sec. 105 of the Burgh Police (Scotland) Act, 1892, as amended by the schedule to the Burgh Police (Scotland) Act, 1903, a town council had full power to deal with stair gas lighting, and to adopt any reasonable method of supply and control, including the fitting up of locking cocks, to be controlled by its employees. *Dobbie v Provost, &c., of Helensburgh*, 25, 50.

Title to sue—Town council or rate collector—Recovery of rates.—In an action in the Ordinary Court for recovery of burgh rates, plea that the collector is alone, under sec. 353 of the Burgh Police Act of 1892, entitled to sue for assessments repelled in view of the general enactment of sec. 9 of the Town Councils Act of 1900, empowering a town council to sue in its corporate capacity. *Provost, &c., of Kilmarnock v Sloan*, 30, 238.

Town council—Reduction of number of magistrates and councillors—Procedure—Town Councils Act, 1900, sec. 11.—Procedure adopted when a petition to reduce the number of councillors is presented. *Magistrates of Cupar, Petitioners, 21, 9.*

Town-clerk—Guarantee not authorised—Town Councils Act, 1900, sec. 99.—Where a town council was sued upon a guarantee for payment of money, which was signed by their town-clerks and delivered to the pursuers, held that, as it did not bear to be granted by the town council, it was not binding, unless authority for its execution was given by standing order of the council, and proof allowed of such authority. *Macfarlane & Co. v Gatehouse Magistrates*, 30, 62.

Wards—Alteration of number of councillors—Town Councils Act, 1900, sec. 117.—The town council of a burgh, divided into five wards having each five councillors, petitioned the Sheriff to re-divide the burgh into eight wards, to reduce the twenty-five councillors to twenty-four, and to apportion the councillors among the new wards. Held that sec. 117 of the Town Councils Act of 1900 (saving local Acts) did not render the petition for re-division incompetent, as the local Act did not provide for re-division, and that apportionment of twenty-five councillors among eight wards was competent, but that an alteration of the number of councillors could not be effected without invoking sec. 11 of the Act, which was not founded on, as it would have had undesirable effects. *Provost, &c., of Kilmarnock v Finlay, &c.*, 24, 339.

Carriage. *See also Arbitration, Debts Recovery Act I., Hiring I., Railway, Reparation, Sale II. (a), (b), Ship I.*

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I. Carriage of Passengers.

Omnibus—Injury by act for saving life.—The driver of a tramway car, to avoid running over a pedestrian who suddenly came in front of the car, applied the electric brake, and stopped the car suddenly, thereby causing injury to a passenger in the car. *Held* that the passenger was not entitled to damages for his injuries. *Muir v Corporation of Glasgow*, 30, 9.

Railway—Luggage—Special damage on loss.—The costumes of a comedian travelling by rail to fulfil an engagement were entrusted to a servant of the railway company, who knew the passenger and his engagement, but they failed to arrive at the place of the engagement, and the comedian was unable to appear and fulfil it. *Held* that the company was liable for the loss of the comedian's fee. *Fowlds v Caledonian Railway Co.*, 23, 84.

Railway—Misdirection of traveller—Damages.—A claim sustained against a railway company for outlays incurred by a passenger who had been misled and had suffered loss by incomplete information obtained from a stationmaster, followed by an incorrect statement by a ticket collector, both servants of the company. *Simpson v Caledonian Railway Co.*, 27, 27.

Railway—Obligation to provide accommodation.—A passenger obtained a first-class ticket at an intermediate station for a main line train. Owing to exceptional traffic and the consequent occupation of first-class seats by third-class passengers on the day on which he travelled, he failed to get a first-class or any seat on the first part of his journey, and travelled standing in the corridor of a carriage. The railway company tendered him the difference between first-class and third-class fares for that part. *Held* that the railway company, having made reasonable provision to deal with the exceptional traffic, were not in the circumstances liable in damages for "annoyance and fatigue" caused by the passenger being obliged to travel part of the way in the corridor. *Question*—When a train arrives at an intermediate station with all the third-class seats full, can an intending third-class

Carriage: Carriage of Passengers—continued.

passenger demand an empty seat in a first-class compartment? *Penney v Caledonian Railway Co.*, 27, 42.

Railway—Return ticket—Notice of period of validity.—A railway return ticket referred for the conditions of the contract to carry the user to the railway company's time tables and bills. The period of the ticket's validity was not defined by any bills; and the only time tables which defined it at six months were those procurable by the public at the booking office on payment of a penny. In an action against a passenger for payment of a fare in respect of carriage after the expiry of the period, held that the condition limiting the period was not reasonably made known to the public, and action dismissed. *North British Railway Co. v Hamilton, &c.*, 22, 68.

Railway—Return ticket—Alternative route—Conditions.—Held that a passenger holding a return-half ticket from Edinburgh to Glasgow (Central) by the Caledonian Railway, available to Glasgow (Queen Street) by the North British Railway, and a season ticket from Queen Street to Partick, was entitled to travel from Edinburgh to Partick by a North British train stopping at Queen Street without delivering the former ticket at Queen Street unless asked to do so. *North British Railway Co. v Stewart*, 24, 54.

Ship—Issue of tickets beyond ship's capacity—Condition imported by ticket—Fault of management.—A passenger by steamer obtained a return ticket available for many days and referring to the owners' bills for conditions of carriage. One of these excluded their liability for loss by act, neglect, or mistake in judgment of those managing the ship. Attempting to return on the same day, the passenger found the ship full, and could not be conveyed by her. Held that the condition was properly imported into the contract of carriage, and that the passenger could not recover damages for the failure to carry him that day, arising from a defect of management. *Fulton v Campbeltown and Glasgow Steam Packet Joint-Stock Co., Ltd.*, 22, 22.

Steamship—Conditions upon ticket.—Held that a shipowner was not liable for injury to a passenger who travelled upon a ticket bearing a condition excluding such liability. *Mandelstam v MacBrayne, Ltd.*, 26, 330.

II. Carriage of Goods—(a) Animals.

Cattle—Railway—Wilful misconduct—Failure of fastenings of truck.—A firm of cattle dealers delivered to a railway company thirty-three head of cattle, to be carried from Glasgow to Aberdeen under the conditions contained in an owners' risk note, which provided, *inter alia*, that the company was to be relieved from all liability for loss, damage, &c., except upon proof that such loss, &c., arose from wilful misconduct on the part of the company's servants. In the course of transit two of the cattle fell on to the railway

Carriage : Carriage of Goods—Animals—continued.

line through a door of one of the cattle trucks becoming open, and were seriously damaged. The truck fastenings were good and frequently examined, and no explanation of the mishap was attempted by the carriers. *Held* (rev. Sheriff-Substitute) that the railway company was not liable for the loss sustained, in respect that there was no evidence of wilful misconduct on the part of the company's servants. *M'Daid & Scott v North British Railway Co.*, 24, 61.

Cattle—Unexplained accident to cow.—A cow, carried by rail without special contract, was at delivery found seriously injured and had to be destroyed. In an action by the owner against the carriers for damages on breach of contract, *held* that, in the absence of fault or negligence on their part, and of a declaration of value by the consignor, the carriers were not liable. *Observations on the contract for carriage of live stock by rail. Gallagher v North British Railway Co.*, 25, 296.

II. Carriage of Goods—(b) Generally.

Common carrier—Person granting note not agent for consignor—Damage in transit.—The owners of goods instructed by writing an express or parcel delivery company to convey the goods from a certain address to their own address. The company got a person at the first address to sign a contract exempting them from liability for damage in transit. The goods were damaged in transit. *Held* that the company were liable as common carriers, as the said person was not the agent of the owners, who had granted no limitation of the carriers' liability. *Cook & Johnston v Atlas Express Co., Ltd*, 27, 233.

Negligence—Forwarding agent or carrier—Liability for negligence during through carriage.—Circumstances under which the pursuers were *held* to be forwarding agents and not carriers; and consequently not liable in the defenders' set-off claim for shortage and non-delivery. *Herfurth & Co. v Paul & MacLeod*, 21, 344.

Negligence—Railway—Misdelivery—Consequential damage.—Where a letter containing a ship's manifest, &c., was handed to a railway company for carriage and was misdelivered by them, *held* that there was no ground for damages, in the absence of special stipulation as to the carriage or intimation of the letter's contents. *Forth and Thames Shipping Co. v North British Railway Co.*, 22, 189.

Negligence—Loss during or after transit—Onus of proof—Damages.—Circumstances under which it was *held* that a railway company who had undertaken to carry wood loaded on their trucks and to be unloaded by the consignees were not liable for loss of wood in transit, having taken the loaded trucks to a railway siding belonging to the consignees at their works, and checked them there, and no proof of an immediate check by the consignees having been adduced. *M'Innes & Co. v Caledonian Railway Co.*, 23, 266.

Carriage: Carriage of Goods—Generally—continued.

Negligence—Carrier's risk—His receipt in good order, but condition unknown—Eggs.—Cases containing eggs packed in wood wool were shipped from Denmark to Leith, and there received by a railway company as "in good order, but condition and contents unknown." In an action for damages to the goods in transit, raised against the railway company, which carried at carrier's risk, held that the consignees must prove injury in the defenders' hands, and that apparent good condition of the cases at Leith did not exclude the possibility of the damage having taken place before the goods reached Leith; and, in the absence of further proof, absolvitor granted. *Danish Butter Co. v North British Railway Co., &c., 29, 249.*

Negligence—Consignment notes—Title to sue—Carrier's duty to deliver—Alteration of contract—Parole evidence—Collateral agreement.—Coals purchased from collieries by merchants for their customers were consigned to a named smack at "Shoot, Greenock," and delivered by the railway company to the smack there. The smack delivered the coal to S., who became bankrupt, and the value of the coal was lost. S. was not a customer of the merchants, and the coal was not intended for him. The merchants raised an action against the railway company for the value of the coal, averring that they were in fault in delivering the coal to the smack for delivery to S. (1) contrary to instructions from the pursuers, and (or) (2) without ascertaining whether or not the coal was intended for S. Held (1) that the merchants, as owners of the coal, could sue the defenders on contracts made by the colliery companies as their agents; (2) that parole proof of alteration of the contract in the consignment notes was irrelevant; (3) that the railway company's obligation was to deliver in terms of the consignment notes; and (4) that the evidence was insufficient to establish the collateral agreement between the pursuers and defenders. *Lindsay & Crookston (Greenock), Ltd. v Caledonian Railway Co., 29, 350.*

II. Carriage of Goods—(c) Owner's Risk Note.

Railway—Just and reasonable condition—No alternative rates—Packing or non-packing by consignor only options fixing acceptance of risk—Whether alternative rates necessary to reasonableness—Railway and Canal Traffic Act, 1854, sec. 7.—The owner and consignor of furniture by railway sued for damages in respect of injury to the furniture during transit, without stating the cause, but alleging that the injury arose through the fault of the defenders or their servants. A special contract for carriage at owner's risk had been signed; but the consignor had no choice of rates—his only choice being between carriers' risk when the goods were properly protected by packing and owner's risk when they were not. Held (rev. Sheriff-Substitute) that it is quite competent with regard to certain classes of goods (particularly furniture) for a railway company to say that they

Carriage: Carriage of Goods—Owner's Risk Note—continued.

will not accept them for carriage at all unless they are made fit to be safely carried, and therefore reasonable that they should accept them unpacked only at owner's risk; and that alternative rate cases are not necessarily the only cases covered by the statutory proviso. Terms of an owner's risk contract held to be just and reasonable. *Munro v North British Railway Co.*, 21, 19.

Railway—Just and reasonable condition—Packing—Railway and Canal Traffic Act, 1854—Held that a special contract of carriage, expressed in a consignment note describing goods as "damageable goods, not properly protected by packing," to be carried at owner's risk only, unless damage caused by "wilful misconduct on the part of the carriers' servants," was a just and reasonable special signed contract in the sense of sec. 7 of the Railway and Canal Traffic Act, 1854. *Shirlaw v North British Railway Co.*, 22, 239.

Railway—Wilful misconduct—Delay by block of line—Fish train.—Held that a railway company who specially undertook to run a "fish" train from Fairlie to Glasgow direct, so as to catch the market in Glasgow, were guilty of wilful misconduct (and so avoided the conditions in their favour in an owner's risk note) in deviating the train from its usual route, and delaying it enough to incur a block on the line which caused a further delay of fully two and a half hours in the transit of a quantity of fish, and that they were liable in damages for the loss of market resulting therefrom. *Glasgow Fish Co. v Glasgow and South-Western Railway Co.*, 23, 219.

Railway—Wilful misconduct—Reasonable conditions—Goods not packed—Railway and Canal Traffic Act, 1854, sec. 7.—The pursuers claimed for damage to a typewriting machine conveyed by the defenders in terms of a risk note which exempted them from liability for damage, unless it should arise from wilful misconduct of their servants. No misconduct was proved, and it appeared that the machine had no packing. Held that the railway company was not liable, in respect that there was no evidence of misconduct, and that the conditions of the risk note were not in the circumstances shown to be unreasonable. Salter Typewriter Co. v Glasgow and South-Western Railway Co., 24, 366.

Railway—Wilful misconduct—Milk consignment delayed.—Under a consignment note which bore that in consideration of the goods being carried at a reduced rate the sender agreed "to relieve the company of liability for loss, damage, misdelivery, delay, or detention, except upon proof that such loss, &c., arose from wilful misconduct on the part of the company's servants," milk in cans was consigned from one railway station to another, necessitating transference at an intermediate station. The porter in charge there had two trolley loads in his waybill, and trusted another porter to bring along the second trolley as usual, but he failed to do so in time for the connection. Held that this did not amount

Carriage: Carriage of Goods—Owner's Risk Note—continued.

to "wilful misconduct." *Fyvie Co-operative Dairy Society v Great North of Scotland Railway Co.*, 26, 361.

II. Carriage of Goods—(d) Through Contract.

Railway and steamship—Agency to forward—Loss after forwarding.—A railway company, whose line terminated at Kyle of Lochalsh, accepted for carriage goods addressed as below to Torridon, a place reached by sea, and beyond the Kyle. The consignment note was headed, "Ordinary consignment note for traffic carried at company's risk," and bore also, "Consignee, Hugh Grant & Company. Address, Kyle of Lochalsh. Thence 'Claymore' to Torridon." The goods were delivered to the "Claymore," and lost at sea. In an action for breach of the contract of carriage, held that the company's liability under the contract ended at the Kyle, or, at any rate, on delivery to the "Claymore" there. *Mackenzie v Highland Railway Co.*, 27, 3.

Mutual agency of carriers—Obligation to deliver notwithstanding known obstacle.—Aitken, the pursuer, entrusted a parcel delivery company with some goods, to be sent from Southampton to "Aitken, St. Enoch Station, Glasgow" (a railway station not the defenders') "to be called for," and they were consigned by the parcel company to a railway company, which accepted them, and through an intermediate railway company transferred them to the defenders, who brought them to their own station in Glasgow. This was done though the carriers all knew that railway companies had a practice of not delivering goods from their own station in towns at the stations of rival railway companies there. The defenders did not deliver at St. Enoch, but sent an advice note to "Aitken, St. Enoch," which Aitken never got. He without unreasonable delay sought his goods at St. Enoch, but only after some weeks found them at the defenders' station, when they had been partly damaged and partly lost. Held that the companies, from the parcel company northwards, were mutually agents for each other, and that the fault of an agent company in forwarding to a station in Glasgow other than St. Enoch, in the knowledge of the practice mentioned, rendered the defenders liable in damages. *Aitken v Caledonian Railway Co.*, 21, 203.

Railway—Damages—Election of debtor.—Held that where goods were entrusted to a railway company as carriers on a through contract for conveyance to a place beyond the termination of their line, and were injured by the alleged fault of second carriers to whom they entrusted them, the latter carriers might be sued for damages by the consignee. *M'Laughlan & Co. v Glasgow, Barrhead, and Kilmarnock Joint Railway*, 25, 118.

Railways—Damages—Liability of delivering company.—Held relevant to sue for damages on the ground of injury to goods in transit the terminal carrier of a series, though the pursuer has no contract with him, if it is averred either (1) that he

Carriage: Carriage of Goods—Through Contract—continued.

is the carrier at fault, or (2) that the carriers are partners or mutual agents in the carriage of the goods. *Dickson v Caledonian Railway Co.*, 26, 186.

Railways—Damages—Election of debtor.—Held that, where goods were carried by several railways under a contract with the railway which received them from the consignor, and they were damaged at a part of the transit unknown, the owner could not sue the last railway company, having no contract with it. *Miller, &c. v Dumbarton and Balloch Joint Railway Co.*, 27, 93.

Railways—Damages—Liability of delivering company.—Held that, where goods were carried over the lines of two railway companies, in virtue of a through contract, the delivering company, who were not the contracting company, and against whom no fault was alleged, were not liable for damage in transit, in the absence of relevant averment of agency or joint adventure between the companies. *Bennie v North British Railway Co.*, 27, 154.

Railways—Freight—Connecting railway—Title of second carrier to sue consignor.—Held that a carrier who took over goods from another carrier, to whom they were delivered on a through contract, and forwarded them to their destination, had no title, at least without an assignation by the carrier contracted with, to sue the consignor for freight, though the carrier had paid to that other carrier his share of the through freight. *Caledonian Railway Co. v Sinclair*, 29, 21.

II. Carriage of Goods—(e) Freight.

Liability of consignor when freight not prepaid—Railway.—Held that, where goods were forwarded by railway at various times on consignment notes which bore that the freight was to be paid by the consignee, but which also contained a condition that the sender was to remain liable therefor, and where the consignee, after taking delivery of the goods, refused payment, the consignor of the goods remained liable to the railway company. Plea by the consignor that the railway company was barred by accepting further consignments on the same terms without intimating to him the consignee's refusal to pay freight of the first consignment repelled. *Caledonian Railway Co. v Rae*, 23, 355.

Liability of consignor or consignee.—Circumstances in which the consignor of goods to be carried by rail was held liable in freight, though when the same goods had been carried over the same space in the reverse direction the consignee had paid. *Glasgow, Barrhead, and Kilmarnock Joint Railway Co. v Dove*, 25, 288.

Liability of consignor or consignee—Mora.—Circumstances in which the consignor of goods for carriage by rail-

Carriage: Carriage of Goods—Freight—continued.

way was *held* liable for the freight, although six months elapsed before he was asked for it, and the carriers had waived their lien, and meantime unsuccessfully sued the consignee. *Caledonian Railway Co. v Graham*, 27, 216.

Liability of consignor—Detention of wagons.—A merchant contracted with a railway company for the carriage of goods over its line. The wagons containing the goods were unduly detained by the consignee, who refused to pay charges for detention. *Held* that the consignor was liable, he having been notified of this condition before entering into the contract. *Glasgow and South-Western Railway Co. v Urquhart*, 29, 291.

Casualty. *See* SUPERIOR AND VASSAL.

Cat. *See* REPARATION II. (b).

Cautionry. *See also* AGENCY, BANKRUPTCY II., BILL OF EXCHANGE, BURGH, EVIDENCE, HIRING III., HUSBAND AND WIFE IV., LEASE VII., VIII., PROCESS IV., RIGHT IN SECURITY, TITLE TO SUE.

Cautionry in interdict—Extent of liability—Expenses.—*Held* that a cautioner in an action for interdict of a poinding, in which interim interdict was granted on caution by bond in the usual form, was liable for judicial and extrajudicial expenses of the action as "damages" sustained by the poinder by the pursuer of the interdict having ultimately failed in it. *Henderson v A B*, 24, 40.

Law agent intervening for client—Guarantee by judicial pleadings.—On behalf of a trader who was liable to sequestration under a pending application therefor, his law agent, in a minute in the application, agreed to pay the expenses of it. In an action against the law agent for payment of these expenses, *held* that he had bound himself as a principal and not merely as a cautioner, looking to the insolvency of his client, the dismissal of the application following on the minute, and writings and circumstances corroborating the unqualified terms of the minute. *Mitchell & Sons v Wilson*, 28, 351.

Relief—Limited guarantee—Double ranking in debtor's sequestration.—C guaranteed a bank against loss on L's account to an extent of not more than £14,600, without prejudice to the bank's remedies against L, and paid up the £14,600. The bank claimed in L's subsequent sequestration for his whole debt, not deducting the £14,600. *Held*, in appeals by the bank and by C, that, under the guarantee, C could not interfere with the bank's full ranking, and could not be ranked for the same sum, and that the bank was entitled to the remedy of ranking in full. *Harvie's Trustees v Bank of Scotland*, 1885, 12 R. 1141, followed. *Logan's Sequestration*, 25, 160.

Relief of cautioner—Bank agent liable for overdraft—Recompence—Assignation.—Where a customer of a bank had

Cautionry—continued.

overdrawn his account, and the agent of the bank who allowed the overdraft, being personally liable to the bank for it, had paid the amount overdrawn, and died not long afterwards, *held* that the agent's executors, who had in fortification of their claim got an assignation of the bank's rights, were entitled to a decree, on the ground either of recompense or of cautionry, against the customer for the amount paid by the agent, and a plea that the agent had made the customer a gift of the amount *negatived*. *Kinnear's Executors v Lees*, 26, 281.

Septennial limitation—Obligation contingently prestable.—A bond for payment of a loan of money by instalments over some fifteen years contained a guarantee by cautioners, and also a provision by which three months' failure to pay instalments entitled the lenders to demand and do diligence for the whole sum remaining unpaid. The principal debtor died within seven years after the loan was granted, and was then over three months in arrear. The lenders, after the seven years expired, sued his executrix and the cautioners for the sums then remaining due. *Held* that the septennial limitation freed the cautioners, as the obligation became prestable within seven years after its constitution, and that as action was not taken within that period, the cautioners were not liable. *Spalding, &c. v Brown, &c.*, 25, 189.

Several obligants—Discharge of one obligant—Reservation of claim against others.—One of several acceptors of a bill of exchange granted a trust deed, to which the holders of the bill acceded, and, on payment of a composition by the trustee, discharged that acceptor, reserving their claim for the balance against the other acceptors. These other acceptors, on being sued, pled that they were cautioners, and were discharged by the discharge of the insolvent, who was principal debtor. *Held*, in respect that that discharge was qualified, that the other acceptors were not relieved, whether cautioners or co-principals. *Exchange Loan Co. v Davidson, &c.*, 24, 168.

Cessio. *See BANKRUPTCY V., EXPENSES II., JURISDICTION.*

Charge. *See also LAW AGENT, LEASE VIII., REPARATION IV.*

Alternative decree and charge—Competency.—Where the holder of a decree alternatively for specific implement or payment of money failed to elect which of these remedies should be adopted, and caused the defender to be charged to implement the decree alternatively, *held* that the charge was wholly inept. *Dalbooca v Millar, &c.*, 21, 183.

Failure to execute—Sheriff-officer's liability.—A sheriff-officer, instructed with a Small Debt decree to give a charge "early" to the defender, omitted for some weeks to charge, and the charge, when given, found the defender in different circumstances. *Held* that the officer was liable in the contents of the decree, irrespective of the actual loss. *Troup & Sons v Hendry*, 22, 271.

Cheque. *See BANKRUPTCY III., IV. (b), BILL OF EXCHANGE, DISCHARGE.*

Children Act. *See PRESCRIPTION III.*

Church. *See also PROPERTY.*

Assessment for upkeep—Objection to cess roll and heritors' list—Onus.—The lands of Floak and Cairne, in the parish of Mearns, were entered on the cess roll at the annual value of £100. On the heritors' list the lands of Townhead of Floak were entered at a valuation of £18 15s. It was proved that these lands were part of the lands of Floak and Cairne, and the defender was assessed for maintenance of church as proprietor thereof. *Held* that the onus of showing that the assessment had been made illegally was on the defender, and it was not to be assumed that the subdivision of the lands of Floak and Cairne was made incompetently. *Wright v Craig*, 22, 26.

Manse—Assessment for new manse—Collector's title to sue—Liability of incoming heritor—Discretion of heritors as to building new manse and as to extent of site and adjuncts of manse—Excessive rating.—*Held* (1) that the collector's general mandate to collect heritors' assessments was sufficient title for his suing for and recovering the same; (2) that where an assessment for manse rebuilding was spread over two years, the second year's rate "in supplement" of the first year's was prestable against a heritor entered on the second year's roll, though she was not a heritor when the first year's portion was enforced; and (3) that the heritors had a discretion as to the site of the manse and as to the details of the conveniences to be supplied to it. *Opinion* that the omission of some heritors from assessment did not nullify or affect the rate, which in any event ought to cover fully the amount required. *Malcolm v Mackay*, 21, 55.

Manse—Glebe—Minister and heritors—Relief of private improvement expenditure in burgh.—Burgh police commissioners issued an order on a parish minister, as owner of the manse and glebe, subjects fronting on a street, to pave a footpath in the street, and on his failure to pave it executed the work, charged him with the expense, and recovered it from him. He sued the heritors for relief. *Held* (1) that he was the "owner," and the heritors were not owners; (2) that the feuing of the glebe by him with the heritors' consent did not make them liable; and (3) that there was no right of relief. *Observations* on the position of heritors with respect to manse and glebe. *Dunnett v Heritors of Kilmarnock*, 21, 260.

Manse—Glebe—Designation—Kirk lands mortified to university—“Incorporated acres” in 1663, cap. 21—Ecclesiastical Buildings and Glebes Act, 1868.—*Held* that church lands mortified to a university are liable to be designated for a manse and glebe *primo loco*. *Held* further, that to obtain the exemption from designation of "incorporate acres" by virtue of 1663, cap. 21, lands in a town must be shown to be

Church—*continued.*

built upon or laid out in gardens, and other lands near the kirk must have been offered in their stead. *St. Andrews University Court v Presbytery of St. Andrews*, 22, 209.

Minister—*Stipend*—Beneficium competenter—Amount of aliment.—A parish minister, having a wife and five children, drew annual emoluments of, in all, £217, including the manse, being his whole income, but had to pay therefrom usual burdens of £20 11s. 3d., and £40 to creditors, according to a trust deed for their behoof. The trustee in a sequestration of later date than the trust deed sued for a further assignation from his income, but had recovered funds nearly enough to pay 5s. in the £. Held that the remaining £131 8s. 9d. was no more than what was necessary for the minister's subsistence and his proper discharge of his office, and, *hoc statu*, an order to assign refused *in toto*. *Mackintosh v Green*, 25, 41.

Church Seat.

Allocation by heritor—*Non-occupation by heritor*.—A heritor having a pew allocated to him in the parish church, did not occupy it himself or by his family, or even reside in the parish, and, by agreement with him, it was occupied for twelve years by a feuar of a small portion of the heritor's lands. Thereafter, the heritor, seeking to get control of the pew but not to occupy it by himself or his family, and not averring any particular interference with his rights, sued for declarator of his right to administer the occupation of the pew, and for interdict against the defenders entering or using the pew without permission from the heritor. The action was held irrelevant. *Paterson, &c. v Brown, &c.*, 26, 286.

Citation. See **PROCESS II.**; also **DEBTS RECOVERY ACT, JURISDICTION, WORKMEN'S COMPENSATION ACT V.**

Coal Mine. See **WORKMEN'S COMPENSATION ACT I., IV.**

Collision. See **ROAD I., REPARATION VI., SHIP III.**

Commission. See **AGENCY III., DEBTS RECOVERY ACT, EXPENSES I., II., PROCESS VII.**

Common Property.

Common interest or servitude—*Village square*—Dedication to public—Subsequent conveyance by superior to parish council—Title of frontager to prevent changes.—A square or market-place was created in a village by the superior, who, in feuuing the ground surrounding it for houses, gave the feuars no express right or interest in the square. It was afterwards gifted by the superior to the parish council, who proposed to improve the surface for public utility. Certain of the feuars sought interdict, on the ground that the alterations would infringe their rights in a pump well, water channel, and cesspool situated in the square and used in connection with their properties for forty years. Held that

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the conveyance to the parish council was no interference with a supposed prior dedication of the square to the public; that the feuars had no title to object, except as to interference with a specific interest or servitude in the square; and that, even assuming that the pursuers had servitude rights in the things complained of, the alterations were such as not to interfere with the reasonable enjoyment of the servitudes; and interdict therefore refused. *Scotts v Cargill Parish Council*, 23, 59.

Mutual gable or division wall—Time for payment by adjoining feuar—Interest stipulated during non-payment.—A feu disposition contained a provision that the gable and division walls to be erected between the piece of ground thereby disposed and an adjoining piece of ground should be mutual, and that the first builder should be entitled to receive from the adjoining feuar “payment of one-half of the value thereof as the same shall be fixed by arbiters mutually chosen, and that within three months after said gable and division walls shall have been built, with interest during the non-payment.” The arbiters did not issue their report until more than two years after the completion of the wall. Held that the first builder was entitled to interest on the sum fixed by the arbiters from three months after the completion of the wall. *Aberdeen Steam Trawling and Fishing Co., Ltd. v Elsmie & Son.*, 21, 240.

Mutual gable—Altered mode of using.—Held that altered circumstances justified alteration of the original use made of a mutual gable. *Clark's Trustees v White*, 24, 68.

Company. See also BILL OF EXCHANGE.

Lien on shares—Registration of transfer—Trust—Articles of association.—Held that a limited liability company had no right of lien under its articles or common law right of retention for the debt of a *cestui que trust* over shares standing in name of a party “in trust,” such as to entitle it to refuse to register a transfer of the shares by the trustee. *Robertson v General Accident Assurance Corporation, Ltd.*, 21, 339.

Liquidation—Illegal preference—Return of purchased goods on eve of liquidation—Companies Act, 1862, sec. 164.—A limited company purchased a quantity of goods from manufacturers, and not having paid the price, an action was raised against them by the sellers on 7th November, 1906. While the action was in Court an arrangement was made whereby the goods were to be returned to the sellers, and credit was to be received by the purchasers for their value, and on 5th and 6th December, 1906, the goods were returned accordingly. At that time the purchasers were, and knew they were, in a state of insolvency, and on 20th December, 1906, they went into liquidation. In an action by the liquidator for re-delivery of the goods or payment of their value, held that in the circumstances the return of the

Company—continued.

goods was not a *bona fide* transaction in the ordinary course of business, and was invalid under sec. 164 of the Companies Act, 1862, and decree was granted for their value (*Loudon Bros. v Reid & Lauder's Trustee*, 5 R. 293, *distinguished*). *Watson & Sons, Ltd., &c. v Veritys, Ltd.*, 24, 148.

Liquidation—Creditor's claim rejected by liquidator—Declarator of its validity—Sheriff.—*Held* (rev. Sheriff-Substitute) that the Sheriff has jurisdiction to entertain an action against a company in voluntary liquidation and the liquidator, for declarator that the pursuer is a creditor of the company, and for payment of a dividend on the debt due to him—questions in a winding up not being limited by sec. 193 of the Companies Act of 1908 to the Court having jurisdiction to wind up. *Lamberton v Kelvindale Chemical Co.* (1904), *Ltd., &c.*, 26, 123.

Liquidation—Preference—Arrestments completed before winding up commenced—Companies (Consolidation) Act, 1908, sec. 211.—Where a creditor obtained decree in Scotland against a limited company registered in England, used arrestments in execution thereon, and raised an action of multiplepoinding to obtain payment of the sum arrested, all before any petition for the winding up of the company was presented, and obtained payment before an order for winding up was made, *held* that sec. 211 of the Companies (Consolidation) Act of 1908, rendering void any attachment, distress, or execution against the company's estate after the date when winding up shall be deemed to begin, did not apply, and that the company and its liquidator could not get back the sum recovered by the creditor. *Inshaw Seamless Iron and Steel Tubes, Ltd., &c. v Smith, Roberts, & Co., Ltd.*, 28, 171.

Shares—Payment of calls—Forfeiture pled by shareholder.—In an action by a limited company for payment of calls on shares, it was pled for the shareholder that the shares had been forfeited, and that the shareholder had thus ceased to be a member of the company and liable to pay. Circumstances in which *held* that forfeiture had not taken place. *Scottish Gympie Consols, Ltd., &c. v Marshall's Trustees*, 22, 120.

Compensation. *See also ARRESTMENT III., BANKRUPTCY II., BURGH, CONTRACT II., III., EXPENSES I., INDUSTRIAL SOCIETY, JURISDICTION, LEASE V., MASTER AND SERVANT II., PRESCRIPTION I., PROCESS VI., PROPERTY, PUBLIC HEALTH, REPARATION, RETENTION, WORKMEN'S COMPENSATION ACT.*

Debt by landlord to tenant—Right of security holders—Ex facie absolute disposition—Back agreement.—In an action for payment of rent at the instance of creditors infect under an *ex facie* absolute disposition a tenant lodged defences, and maintained that he was entitled to set off against his rent, then due, a debt due to him by the landlord on account of goods supplied. The Court repelled the defences and granted decree. *Robertson, &c. v Young*, 22, 300.

Confirmation. *See EXECUTOR.*

Conspiracy. *See CRIME, REPARATION I.*

Constitution. *See AGENCY, CONTRACT III., LEASE I., SALE, SUCCESSION.*

Consumption of Legacy. *See SUCCESSION.*

Contract. *See also AGENCY, ARBITRATION, BANKRUPTCY, CARRIAGE, CRIME, DONATION, HIRING, HUSBAND AND WIFE, I O U, JURISDICTION, LAW AGENT, LEASE, LOAN, MASTER AND SERVANT, PARTNERSHIP, PLEDGE, PROMISE, PROPERTY, REPARATION, ROAD, SALE, SHIP, SMALL DEBT ACTS.*

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I. Illegal and Immoral Contracts.

Restraint of trade—Masters' association levying from member of association—Trade union—Trade Union Act, 1871, sec. 4—Trade Union Act Amendment Act, 1876, sec. 16.—An association of master painters sued a member of the association for payment of percentages which, under one of their rules, he had added to the prices of work done for employers and received as part of the prices, and, as a member, was bound to pay to the association. *Held* that the action was incompetent in respect that the association was a trade union in the sense of sec. 16 of the Trade Union Act Amendment Act, 1876, and that the rules constituted an "agreement" which could not be enforced, as provided by sec. 4 of the Trade Union Act, 1871. *A B, &c. v Forrest*, 23, 80.

Restraint of trade—Trade union—Funeral benefit—Widow's title to sue.—*Held* that funeral benefit, due by a trade union under its rules to the widow of a member, is a debt enforceable by her at law, and that action at law to recover it is not barred by sec. 4 of the Trade Union Act, 1871, relating to the benefits of members. *Muir v Associated Ironmoulders of Scotland*, 30, 354.

Sponsio ludicra—Prize at flower show—Disqualification of ostensible winner.—At an exhibition and competition for prizes at a flower show the judges awarded a number of prizes to a person whom the association afterwards (and before delivery of the prizes) held disqualified by breach of the rules made by the association to be observed by competitors. *Held* that an action at his instance against the association for delivery of the prizes was incompetent, as relating to a *sponsio ludicra*. *Nichol v Galashiels Horticultural Association*, 21, 141.

Sponsio ludicra—Action for prize—Bowling match—Disqualification of ostensible winner.—At a bowling competition, where prizes were offered to the highest scoring rink, the committee in charge of the competition disqualified the rink with the highest score, owing to one of the players in the

Contract: Illegal and Immoral Contracts—continued.

rink not having entered for it, this player having played as a substitute for a person who had entered, but declined to play. *Held* that an action at the instance of the four members of the rink with the highest score against the committee of management for the value of the prizes was incompetent as relating to a *sponsio ludicra*. *Gillies, &c. v The Greens Committee of Kelvingrove Public Bowling Green, Glasgow, &c.*, 29, 149.

II. Implied Contracts.

Advertisement—Entrance to “public” exhibition—Offer and acceptance.—Where a company advertised a public exhibition promoted by them, and the fees to be paid for admission, *held* that the public were not entitled by implied contract to demand admission on paying the entrance fees, but that there was no contract for admission until the offer of the entrance fee by a member of the public had been accepted by the company. *M'Askill v Scottish Exhibition of National History, Art, and Industry, Glasgow, 1911, 28, 176.*

Counsel's clerk's fees.—*Held* that the implied contract of a client to pay a proportionate fee to the clerk of counsel when paying a fee to counsel himself extended to a case in which counsel, having been first employed in Scotland to advise, was afterwards there instructed to proceed to England and depone there to matters of Scots law. *Ritchie v Duke of Richmond and Gordon, 24, 99.*

Master and servant—Pauper girl boarder kept on as servant.—A girl, thirteen years old, was boarded out by parochial authorities with a farmer, and aliment was paid on her behalf to him until she became fourteen years of age. Thereafter for five years she remained with the farmer, and assisted with the housework, and, so far as possible, with the farm work. *Held* (1) that, in respect the defender had failed to establish any agreement that the pursuer's services were to be gratuitous, wages were due, and (2) that, in virtue of the triennial prescription, the pursuer's claim was limited to the last three years of her service. *Buchanan v Nicol, 29, 285.*

Niece as housekeeper, &c.—Wages.—Circumstances in which an illegitimate girl, living with and working for an aunt, was *found* entitled to wages, modified by the Court, for her services during the last three years of her aunt's life, and a decree was *granted* against the aunt's executors therefor. *M'Intyre v M'Intyre's Executors, 28, 189.*

Party's knowledge of terms—Arbitration.—Where at the side of sale notes of flour it was stated that any dispute under the contract was to be settled under the rules of an association, of which the sellers were members but not the buyer, who knew nothing of the rules till a dispute

Contract: Implied Contracts—continued.

was in progress, held that there was no implied contract to refer the dispute. *M'Connell & Reid v Smith*, 27, 189.

Sale of heritage—Apportionment of feu-duty.—Held that the purchaser of a heritable subject with entry at Whitsunday, who paid the year's feu-duty at Martinmas, was entitled to recover half of that year's feu-duty from the sellers, a burden on the rent of the year being apportionable as the rent itself would be by the Apportionment Act of 1870. *Sinclair v Menzies, &c.*, 28, 230.

Services between persons in trades—Quantum meruit.—A painter and paperhanger sued for a trade account. The defender, also a trader, claimed by contra account a larger sum for clerical services proved to have been rendered to the painter, but admitted that he had not intended to charge for these, expecting advantages in trade from him. Held that, on failure of proof of a contract for remuneration, the counter claim must be disallowed. *Ranger v Maciver*, 22, 129.

III. Constitution, Implement, Nullity of Contracts.

Constitution—Adoption—Agent exceeding powers—Time for ratification—Charter party.—Held, in an action of damages for failure to fulfil a charter party, that where a vessel had been chartered through an agent, who had agreed to a term beyond his powers, and the principals had not ratified this agreement prior to the time of performance, they were not thereafter entitled to ratify the agreement, and, there being no *consensus in idem*, the charterers were entitled to resile. *Owners of s.s. "Tuborg" v Wright & Co.*, 26, 305.

Constitution—Consensus—Identity of party—Hiring of cab.—Held that there was a concluded contract by an order for a cab being accepted, although the identity of the hirer was not at the moment disclosed. *Craik v Glasgow Taxicab Co., Ltd.*, 27, 157.

Constitution—Executory contract—Construction—Collateral agreement, or novation or compromise.—In February, 1905, a contractor for the erection of a trestle bridge and tramway sub-contracted with another firm for the work, and part of the bridge was erected by 19th March, when the parties disagreed, and the principal contractor completed the bridge. In April and May the parties agreed that the sub-contractor should deliver the material remaining in his yard for the tramway at the full contract price therefor, and make a rebate of £55 on the total price, and that the principal contractor should accept this in lieu of his claim for labour, expenses, and damages. This agreement was implemented. In an action by the sub-contractor for the price of both deliveries, held that the May contract superseded the February contract, settled new terms for the future, and compromised all claims and disputes *hinc inde*, for the past, and decree given for the contract price less the £55 rebate. *Brownlie & Murray, Ltd. v Adam & Co.*, 25, 58.

Contract: Constitution, Implement, Nullity of Contracts—continued.

Constitution—Innominate contract—Proof.—*Held* that a contract whereby, as alleged, payment for goods ordered was to be taken in goods was not an innominate contract of such an unusual or extraordinary kind as to render parole proof incompetent. *Mitchell & Sons v Sirdar Rubber Co., Ltd.*, 27, 334.

Constitution—Insurance—National Insurance Act, 1911—Medical benefit.—*Held* that an insured person was entitled to sue, upon contract made by statutory means, the medical practitioner on the panel who had accepted him as a patient, for damages for breach of contract, viz., fees paid to another doctor if the panel doctor failed to attend the insured. *Carr v Ramsay*, 29, 321.

Constitution—Suspensive condition—Adoption of agent's transaction—Hiring of actor.—The manager of a musical hall, by agreement with certain actors, entered in his engagement book in pencil their names for performances on certain dates. Engagements of actors were usually by written contracts exchanged between them and the proprietors of the music hall. There was no such contract. In an action by the actors against the proprietors for damages for breach of contract, *held* (1) that the engagement was only provisional, dependent on the confirmation of the directors of the music hall, and (2) that the engagement was not confirmed. *Fields, &c. v Glasgow Pavilion, Ltd.*, 27, 38.

Constitution—Writing—Qualification of terms—Misrepresentation.—Advertising contractors, holding the defender's written contract for advertising on a theatre curtain during fifty-two weeks certain, sued him for a quarter's hire or rent. He pled that the theatre had been closed before the fifty-two weeks were fulfilled, that it did not open in time for the Christmas audiences he had expected to see his advertisement, and that the curtain was not displayed at least twice to audiences during each performance. *Held* that the closing of the theatre was not contemplated by the contract, and the loss lay when it fell, the pursuers getting a proportionate hire; that the date of the opening was not an essential, or any, condition of the contract; and that the display of the advertisement while the audiences assembled and dispersed was sufficient compliance with the contract's written terms, which could not be varied by parole proof as proposed by the defender; and decree granted. *Scottish Advertising Co. v Kane*, 30, 64.

Implement—Building contract—Extras—Custom of trade as to measurement—Finality of architect's certificate.—*Held* that an architect employed in the usual course to prepare plans and estimates of quantities, and arrange contracts and inspect the carrying through of building operations, is an agent for the proprietor in regard to contractors for parts of the work, and is entitled, according to the custom of the building trade, by himself or his assistants to measure the work contracted for and extras, and adjust the measurement

Contract: Constitution, Implement, Nullity of Contracts—continued.

thereof with the contractors as between them and the proprietor; and that a final certificate granted by him to the contractors after such adjustment has the effect of binding the parties to the contract, and cannot be questioned on matters of detail relating to the work. *Observations* as to the remedy of the proprietor where there have been mistakes in details in the adjustment upon which the final certificate was founded. *Shedden & Sons v Crawford*, 21, 331.

Implement—Executory contract—Satisfaction of party's husband.—Where builders sued for the price of a house, contracted to be built to the satisfaction of the owner's husband, but did not state that he was satisfied or specifically impugn his judgment, *held* that their action was irrelevant. *Kidd & Sons v Bain*, 29, 123.

Implement—Building contract—Deviation—Remedy—Acceptance of work.—Joiners, who had contracted to do the carpenter work of a tenement of dwelling-houses according to specifications, used materials other than those specified for certain important parts of the work. They did so in good faith, but without the authority of the building owner. *Held* that in an action upon the contract they could recover only the contract price, less what it would cost to rectify the mistake. The rule in *Ramsay v Brand*, 25 R. 1212, followed and expanded. The building owner, after calling upon the contractors to undo the deviations and complete the building according to contract, took possession of the building through her tenants. *Held* that she had not thereby waived performance of the contract. *Andersons v Dow*, 23, 51.

Implement—Hire of telephone—Wrong number in telephone directory—Implied contract—Damages.—The defenders were sued for the yearly rent of a telephone, hired originally from the Glasgow Corporation, and they counter-claimed for loss of business occasioned by the insertion of a number in the telephone directory issued by the Post Office—who took over the telephone system from the Corporation—which number did not correspond with the instrument erected in the defenders' office. It was pleaded that, according to a notice inserted in the said directory, the Post Office were “not . . . liable for any omissions or inaccuracies” in it. *Held* that the attention of the defenders not having been directed to that notice, it could not be imported into the contract made by them with the Glasgow Corporation, which contract had been continued year by year by the parties by relocation, and that the defenders were entitled to a deduction for want of proper use of their telephone, and also to damages. *Lord Advocate v Morton & Son*, 25, 186.

Implement—Inspection—Lease—Combination of summary and ordinary conclusions.—Where in the currency of a farm lease or the execution of a contract parties are at variance as to the manner in which the contract is being implemented,

Contract: Constitution, Implement, Nullity of Contracts—continued.

and matters have come to a stand, it may be competent and desirable to obtain a remit for inspection and report, though such a report will not exclude proof if demanded; and in framing the necessary application it is in general competent to combine cravings for ordinary and summary remedies. *Brown v Addison*, 25, 47.

Implement—Mutuality—Submission.—*Held* that the principle of mutuality applied in a contract of submission, where the arbiter, suing for his agreed-on fee, was met by a claim for damages in respect of failure in his duty as arbiter. *A v B*, 23, 289.

Implement—Sale of goodwill—Canvassing customers.—M, acting under an informal arrangement with certain other parties, purchased the business and goodwill of the Kelvindale Chemical Company, Limited, which was in liquidation, with a view to their transference to another company to be afterwards formed. This company, the Kelvindale Chemical Company (1904), Limited, was subsequently incorporated, and M, who had in the meantime been carrying on the business, then transferred the whole assets thereof to the new company, part of the agreement being that he should pay over to the new company the profits he had earned while carrying on the business, and that the company should relieve him of any obligations he had entered into, including those to the old company. The Kelvindale Chemical Company (1904), Limited, thereafter went into liquidation, and the liquidator sold the stock and goodwill to the pursuer. M subsequently started a rival business. *Held* that M was not bound to refrain from canvassing the customers of the Kelvindale Chemical Company (1904), Limited, and its predecessors. *Williamson v Meikle, &c.*, 27, 18.

Nullity—Compromise—Error calculi.—Creditors in June, 1908, sent their debtor a detailed account, which was added up at £33 instead of £43, and neither party knew of the error when the creditor compromised his claim by accepting £20 in full, granting in exchange a full discharge. *Held*, in an action for the full account between the parties as at 28th February, 1909, which account included several fresh items incurred by the defender and credited as paid for, and also included a claim for the difference between the correct amount of the account as it June, 1908, and the amount incorrectly stated in the account then rendered, that the creditor was bound by the compromise, and could not be heard to say that he meant to give up only £13 instead of the £23 actually waived. *Belhaven Engineering and Motors, Ltd. v Reid*, 26, 234.

Counterclaim. See AGENCY I., CONTRACT II., III., EXPENSES I., HIRING III., PROCESS VI., SMALL DEBT ACTS.

Coupon. See INSURANCE.

Crime. *See also* DELIVERY, REPARATION I., IV., SCHOOL, SUNDAY TRADING, TITLE TO SUE.

Child desertion—Title to sue—Summary Jurisdiction Act, 1908, sec. 18.—*Held* that a prosecution at the instance of the inspector of poor against a father who had deserted or failed to maintain his children, brought under sec. 80 of the Poor Law Act of 1845, did not require the concurrence of the procurator-fiscal—the inspector of poor having been empowered to prosecute by the Poor Law Act. *Inspector of Poor for the Parish of Glasgow v Reid*, 25, 217.

Child neglect—Putative father refusing to maintain bastard except in poorhouse.—*Held* that the natural obligation of the father of a bastard to maintain his child, rendered definite by decree, was not implemented by his offering to pay for her maintenance in the poorhouse; and such a father, neglecting by himself or through the mother or otherwise to maintain his child of nine years, *convicted* as a vagabond under 1579, cap. 74, and 8 & 9 Vict. cap. 83, 80. *Bryden v Wilson*, 30, 306.

Evidence—Competency of prosecutor as witness—Contravention of Truck Act, 1896.—*Held* that a factory inspector, who was prosecuting for a contravention of the Truck Act, 1896, was entitled by statute to give evidence in the prosecution. *Vines v Goldie & Co., Ltd.*, 27, 109.

Intimidation—Conspiracy and Protection of Property Act, 1875, sec. 7—Trades Disputes Act, 1906, sec. 2—What is intimidation?—Some hundreds of dock labourers on strike and others entered, unopposed, private docks, and in procession approached a vessel which other labourers were discharging. There was nothing to show that they intended anything illegal, but on being told by those in authority that they might proceed no further they forcibly invaded the shed and working platform and the ship, overpowering the police and causing the working labourers to leave their work. No specific violence to persons or property was proved. *Held* that members of the assemblage of strikers were as such members responsible for the illegal acts of the assemblage, and guilty of intimidating named labourers, who had been inspired with fear and had in consequence left their work. *Gair v J. H., &c.*, 27, 322.

Crofter. *See* PROPERTY, SMALL LANDHOLDERS ACTS.

Curator. *See* HUSBAND AND WIFE I., JUDICIAL FACTOR, JURISDICTION, PARENT AND CHILD, PROCESS VI.

Custody. *See* HUSBAND AND WIFE I., II., PARENT AND CHILD, REPARATION I.

Damage by Riot.

Liability of police burgh—Extent of statutes.—A householder in a burgh of less than 20,000 inhabitants, which had been formed under the Burgh Police Act of 1892, claimed under the Acts 1 Geo. I. c. 5, 57 Geo. III. c. 19, 3 Geo. IV. c. 33, and the said Police Act, sec. 341, for damages in respect of injury to his property in the burgh by riot. *Held* that the statutes now extended to such a burgh, and that a plea that they applied only to the kinds of burghs mentioned in the Acts and to counties, and that the claim should be presented to the county, was not well founded. *Watson v Town-clerk of Barrhead*, 28, 286.

Damages. See REPARATION; also CARRIAGE, CAUTIONRY, CONTRACT III., DEBTS RECOVERY ACT I., EXPENSES II., GAME HIRING, INTEREST, JURISDICTION, LEASE II., III., IV., LOAN, MASTER AND SERVANT, NAUTÆ CAUPONES, NUISANCE, POINDING, PRESCRIPTION III., PROCESS VI., PROPERTY, PUBLIC HEALTH, RAILWAY, ROAD, SALE II., III., V., SHIP I., III., V., SLANDER, SMALL DEBT ACTS.

Dean of Guild. See POLICE I.

Debts Recovery Act—

I. Competency,	page 60
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I. Competency.

Bowing rent.—*Opinion* that a bower is a sub-tenant, and *held* that an action for bowing rent of a dairy is incompetent in the Debts Recovery Court. *M'Cheyne v Gemmell*, 22, 296.

Claim against carriers for empty packages—Damages or accounting.—*Held* that a claim for shortages made against carriers, who, it was alleged, had failed to return baskets, bottle boxes, &c., in which the pursuers' goods, committed to them for carriage to customers, had been packed, was of the nature of an action of damages or accounting, and incompetent in the Debts Recovery Court. *Hannah & Co. v Bell & Co.*, 23, 10.

Furthcoming following arrestment of £60 on dependence of Debts Recovery action.—A pursuer sued in the Debts Recovery Court, and on the dependence of his action used an arrestment for £60. In his action he got a decree for £49 odds of principal and expenses, both together exceeding £50. He then raised an action for furthcoming of the arrested fund, restricting his claim to £50. *Held* not incompetent to sue such an action following such an arrestment. *Opinion* upon sec. 6 of the Act—expressly validating arrestment on the dependence to an extent not exceeding £50, but not adding (as elsewhere) the words, “exclusive of

Debts Recovery Act: Competency—continued.

expenses and dues of extract"—that an arrestment exceeding £50 by reason of expenses is not incompetent. *Watson & Co. v Urie, &c.*, 23, 257.

Jurisdiction—Domiciled Englishman carrying on business in Scotland—Goods supplied to English business sued for in Scotland—Sheriff Courts Act, 1876, sec. 46.—In an action which was brought in the Debts Recovery Court at Dundee for the price of goods supplied, the defenders being domiciled in England, and having a place of business in Dundee, and the goods having been partly supplied to a branch business in England and partly to the Dundee branch, held that the defenders were subject to the jurisdiction of the Sheriff in the Debts Recovery Court, and could be sued there for the price of such goods. *Wolfson v Crown Art Co., &c.*, 21, 245.

Merchant's account—Carrier's claim for demurrage.—*Held* (rev. Sheriff-Substitute) that an action brought by a railway company for carriage and for demurrage in respect of the detention of wagons over the stipulated period could be competently sued in the Debts Recovery Court. *North British Railway Co. v Cunningham*, 21, 126.

Merchant's account—Stockbroker's commission and outlay.—*Held* that a stockbroker's account for commission and cost of stamps, and also for loss sustained on the sale of stock purchased on his client's instructions, but which his client had failed to pay for, could be competently sued for in the Debts Recovery Court. *Glen v Adam*, 22, 64.

Repetition of price of rejected goods.—*Held* incompetent to sue in the Debts Recovery Court for repetition of the price paid for a horse rejected by the purchaser as disconform to the warranty under which it was sold. *M'Kinnon v Crooks*, 21, 124.

Repayment of price of rejected goods—Damages.—*Held* that an action for repayment of the price of a horse bought under warranty and rejected as disconform thereto was incompetent in the Debts Recovery Court. *M'Dougall v Malcolm*, 21, 225.

Sale of goods—Counter claim of damages.—*Held* that a claim of damages arising out of a breach by the seller of a contract for the sale of milk is incompetent as a defence in the Debts Recovery Court. *Lawson v Smellie*, 22, 234.

Servant's fees as damages.—Circumstances where an action by a farm servant for "balance of wages" was held to be a claim for damages, and therefore incompetent in the Debts Recovery Court. *Halliday v Wyllie*, 22, 309.

II. Procedure.

Appeal against decree in absence.—*Opinion* that appeal against a decree granted under the Debts Recovery Act in the absence of a party is not competent—the statute stating

Debts Recovery Act: Procedure—continued.

(sec. 10) the occasions in which appeal is competent, and excluding (sec. 17) review on all others, but that in respect of previous decisions the existing practice in Lanarkshire should be allowed to continue. *Wishart v Bremner*, 22, 124.

Record of judgment where no separate findings in law and in fact.—*Held* that in Debts Recovery causes an interlocutor sheet was necessary only where there was a final interlocutor with separate findings in law and in fact. *Donald & Sons v Maule*, 22, 21.

Re-hearing.—Circumstances in which a re-hearing was ordered under sec. 11. *Bransom, Kent, & Co. v Evans*, 21, 152.

Sist—Service.—*Opinion* as to the proper mode of serving a sist upon an English pursuer. Where one of two defenders sisted a decree which had been granted against both defenders jointly, *held* that it was not necessary to serve the sist upon the other defender. *Imperial Tobacco Co., Ltd. v Smith, &c.*, 22, 133.

Sist—Decree impugned.—A decree against two defenders jointly bore to have been granted of consent of both. One of the defenders applied for a sist on the ground that the entry in the Debts Recovery Book was incorrect, and that the decree had really been granted in his absence. *Held* that it was competent to inquire whether the decree had been granted *in foro* or in absence before pronouncing on the competency of the sist. *Imperial Tobacco Co., Ltd. v Smith, &c.*, 22, 133.

Sist after decree and poinding—Implement.—A sist was served upon a pursuer after a poinding had been executed, but before a sale had followed thereon. Objection was taken to the poinding on the ground of irregularity appearing *ex facie* of the execution of poinding. *Held* that the sist was incompetent, and that the objection could not be considered. *Imperial Tobacco Co., Ltd. v Smith, &c.*, 22, 133.

Declarator. *See also ASSESSMENT, INTERDICT, PROCESS I, SHERIFF.*

Competency—Action for declarator that account not due.—An action was raised against a shopkeeper for declarator that a certain account was not due and resting owing by the pursuer to the defender; *held* that the action was irrelevant. *Burns v Dalling*, 29, 121.

Decree. *See PROCESS X., RES JUDICATA, SHERIFF, TITLE TO SUE.*

Delectus Personæ. *See ASSIGNATION.*

Delivery. *See also CARRIAGE II., DEPOSIT, PARENT AND CHILD, PROCESS II., VI., RETENTION, RIGHT IN SECURITY, SALE II., IV., SHIP, SMALL DEBT ACTS.*

Betting material of convicted bettor—Confiscation of money, &c., found on a person in the premises—Burgh Police

Delivery—*continued.*

(*Scotland*) Act, 1892, sec. 407.—*Held*, where a man was convicted of using a shop for the purpose of conducting betting, in contravention of sec. 407 of the Burgh Police (*Scotland*) Act, 1892, that money and betting books and slips found on his person were liable to confiscation, and need not be re-delivered to him. *Higgins v Burt*, 23, 105.

Demurrage. *See* CARRIAGE II. (e), DEBTS RECOVERY ACT I., HIRING I., SHIP I.

Deposit. *See also* BANKRUPTCY I., IV. (b), LEASE IV., SALE II. (b).

Railway passenger's luggage—Conditions on back of cloak-room ticket—Declaration of value.—A passenger sent a box and a hamper to the North British Railway Company, to be deposited in their left-luggage office at Queen Street station, Glasgow, for safe custody, paid twopence for each package, and received in exchange a left-luggage ticket, on the face of which was printed, “The company only receive the within-mentioned articles upon the conditions expressed on the back of this ticket.” The fifth condition on the back was that “the company will not be responsible for the loss . . . of any parcel, package, or other article where the value of such parcel, package, or other article exceeds £5,” unless at the time of delivery its true value was declared to exceed £5 and an additional fee paid. The articles were, on account of the company’s heavy luggage store being full, left on one of the station platforms, and next morning the box had disappeared. No declaration had been made, and the passenger claimed for its loss more than £5. *Held* that the railway company was not liable for the loss to any extent, and the action was *dismissed*. *Meldrum v North British Railway Co.*, 23, 135.

Storage by hirer—Lien for storage dues—Hire-purchase agreement—Delivery.—*Held* that auctioneers, with whom the hirer had stored a hired sewing machine in breach of the hire agreement, had no lien over it for the storage as against a demand for delivery by the true owners, and delivery accordingly ordered. *Singer Sewing Machine Co., Ltd. v Brady & Sons*, 24, 10.

Desertion. *See* HUSBAND AND WIFE.

Diligence. *See* ARRESTMENT, ASSESSMENT I., IV., BANKRUPTCY I., III., CHARGE, COMPANY, EXPENSES II., IMPRISONMENT, JURISDICTION, LEASE IV., V., VII., VIII., PARTNERSHIP, POINDING, PROCESS I., V., VIII., REPARATION I., IV., RIGHT IN SECURITY, SMALL DEBT ACTS, SUPERIOR AND VASSAL.

Discharge. *See also* BANKRUPTCY VI., VII., BILL OF EXCHANGE, CONTRACT III., V., HUSBAND AND WIFE III., LAW AGENT, LEASE IV., PRESCRIPTION, SHIP V., WORKMEN’S COMPENSATION ACT V.

Payment—Account mistakenly receipted in full—“Paid by cheque”—Receipt granted in re mercatoria.—The pursuers

Discharge—continued.

sued for payment of the balance of an account for £70 odds for goods supplied. The defender produced an account for £60 odds up to a certain date, discharged in these terms, "Paid by cheque, 29th December, 1905." The pursuers answered that the cheque was for only £20, and gave credit therefor. *Held* that the pursuers could prove their averments that the discharge was partial only by writ or oath of the defender. *Observations* on the meaning of "paid by cheque." *Kelly & Co. v Rae*, 25, 3.

Payment—Conditional payment.—The defender sent the pursuers a cheque for £18 5s., which, he said, with £1 15s. due by them to him, made up £20 due by him to them on a promissory note, and asked for the note. The pursuers did not return the cheque or the note, but sued for the £20 as due on the note. *Held* that they were barred from repudiating the settlement offered by the defender, not having returned his cheque at once. *Lawrie & Symington v Tudhope*, 25, 213.

Payment—Conditional payment—Cashing of cheque and retention of money.—The defender sent to the pursuers a cheque for a composition, in settlement of a bill granted by him to them, and stated in the letter sending the cheque that the remittance was "in full settlement" of the bill. The pursuers retained and cashed the cheque, and acknowledged the remittance as "on account," which acknowledgment the defender immediately returned, refusing to accept it. In an action by the pursuers for, *inter alia*, the balance of the bill, *held* that in the circumstances they were not precluded from suing. *M'Kean & Buchanan v Matson*, 26, 207.

Payment—Conditional payment—Cashing of cheque and retention of money.—The defender's agent sent to the pursuer a cheque for a composition in settlement of an account admittedly due by the defender to the pursuer, and stated, in the letter sending the cheque, that it was sent on the distinct understanding that it was to be accepted in full settlement of the pursuer's claim. The pursuer retained and cashed the cheque, but did not acknowledge it. He, however, within a few days intimated verbally to the defender's agent that he did not accept the cheque in settlement. In an action by the pursuer for the balance of the account, *held* that he was not precluded from suing. *Lang v Milne*, 30, 204.

Payment—Lodgment in creditor's bank account.—*Held* that payment of a sum due, made by the debtor in good faith into the creditor's bank account, with intimation to the creditor, but without his authority, was ineffectual to discharge the debt. *Wood v Bruce*, 24, 24.

Payment—Lost annuity warrant.—Where a warrant for payment of a half-yearly annuity due by a public body was despatched by post but not received by the payee, *held* that payment had not been made, and decree for payment

Discharge—*continued.*

granted. *Coats, &c. v Glasgow Corporation Gas Department*, 28, 38.

Dog. *See REPARATION II. (b), ROAD I.*

Domicile. *See JURISDICTION.*

Donation.

Mortis causa gift—Parent and child.—Circumstances in which a gift by a mother to her daughter of a deposit receipt in names of both and the survivor was upheld. *Leggan's Executor v M'Cann*, 26, 256.

Composite writing provided for bastard—Bequest or obligation—Implied revocation by later will.—The father of an illegitimate child delivered to the child's mother a holograph writing in these terms:—"This is to certify that the undersigned is the father of F. T., daughter of Mrs. T., residing at . . . at this date, for which I am willing to provide during my life, and after my death to receive one-third of my whole estate.—J. B." In an action by the child against the grantor's executrix for payment of a third of his estate, held that the writing (when stamped) constituted an obligation on the defender to make payment, and was not revoked by the grantor's general settlement of later date. *F. T. v B.*, 28, 199.

Education. *See ASSESSMENT I., III., IV., ELECTION, POOR III., SCHOOL.*

Ejection. *See HIRING I., JURISDICTION, LEASE VII., VIII., PROPERTY, RIGHT IN SECURITY, SMALL LANDHOLDERS ACTS, SUPERIOR AND VASSAL.*

Election. *See also BURGH.*

Parish council—Resignation of elected candidate withdrawn—Interdict of his acting—Date at which resignation takes effect.—A candidate at an election of a parish council was returned, and summoned to the first meeting of the new council, but wrote the clerk of the council that he did not accept office. Next day he wrote him again, withdrawing his non-acceptance. In an action for interdict of his acting as member of the council, *held* that the resignation was complete when the first letter was delivered to the clerk, and could not be withdrawn thereafter, and interdict granted. *Cooper v Ramsay, &c., 24, 212.*

School board—Petition to unseat—Relevancy.—Circumstances in which a petition to find two candidates for service on a school board guilty, by themselves or one of them or their agents, of corrupt practices at the election, and disqualified under the Corrupt Practices Act of 1890, was *held* irrelevant. *Burgess, &c. v Waldie, &c., 22, 220.*

School board—Alien—Finality of nomination—Procedure on challenge of election.—An alien having been nominated for election to a school board, objection was taken to his nomination, but was not insisted in. At the election he was declared to have been elected; but one of the unsuccessful candidates having challenged the validity of his election, his nomination and election were *held* to have been incompetent, and the first of the unsuccessful candidates was declared to be a member of the school board. *Blades v Jansen, 22, 226.*

Town council—Failure to observe enactment—Miscalculation of vacancies—Burgh Police Act, 1892, sec. 17—Town Councils Act, 1900, sec. 113.—Procedure in an application to the Sheriff under sec. 113 of the Town Councils Act, 1900, where an election and return had proceeded upon a miscalculation of the vacancies in a town council. *Mackay, Petitioner, 21, 46.*

Town council.—Procedure at trial of an election petition under the Town Councils (Scotland) Act, 1900 (63 & 64 Vict. cap. 49), and the Elections (Scotland) Corrupt and Illegal Practices Act, 1890 (53 & 54 Vict. cap. 55). *Moore, &c. v Houston, 22, 55.*

Town council—Bailies—Failure to observe enactment—Seniority of bailies—Sheriff.—Under sec. 17 of the Burgh Police

Election—*continued.*

Act of 1892 and sec. 113 of the Town Councils Act of 1900, seven householders petitioned the Sheriff for an order to rectify the statutory positions of the two bailies. *Held* (1) that the Sheriff had special jurisdiction given to him by these sections, and (2) that an election to the office of senior bailie was null when there was already a bailie who had been longer in office since his last election as such, and (3) expenses allowed to the petitioners. *Harrold, &c. v Provost, &c., of Kirkwall*, 24, 208.

Town council—*Disqualification of elected candidate—Bankrupt—Right of opposing candidate to be declared elected—Voters' knowledge of disqualification—Town Councils Act, 1900, secs. 13 and 14—Elections Corrupt and Illegal Practices Act, 1890, sec. 36.*—A, an undischarged bankrupt, having been nominated for election as a councillor of a burgh, obtained a majority of votes over the opposing candidate B, and was declared by the returning officer to have been elected. B having presented a petition challenging A's election and for declarator that he himself was elected, *held* (1) that A was disqualified from being nominated or elected, and (2) that in respect the electors who voted for A were aware of the said disqualification they must be held to have thrown away their votes, and accordingly that B was duly elected. Form of election petition approved. *Brown v Gibson*, 26, 65.

Town council—*Expenses—Omission duly to pay and return.*—Circumstances in which a candidate at a town council election failed to pay his election expenses within twenty-one days after the election, and to send to the town-clerk a return of them within twenty-eight days after the election, but was allowed thereafter to lodge a return—having already paid the expenses. *Rae, petitioner*, 29, 174.

Town council—*Scrutiny and recount—Procedure in petition.*—*Held* that statutory procedure in a petition for a scrutiny and recount, viz., signature by the petitioner himself, and service of a statutory notice, not having been carried out in accordance with the Elections Act of 1890, secs. 31 (3) and 33 (3), the application must be dismissed with expenses. *Baxter v Stevenson*, 30, 159.

Employers' Liability Act. *See* PROCESS VI., REPARATION III. (a), V., WORKMEN'S COMPENSATION ACT V. (a).

Entail. *See* LEASE I.

Error. *See* CONTRACT III., DISCHARGE, ELECTION, INSURANCE.

Evidence. *See also* ARRESTMENT, BANKRUPTCY II., IV. (b), BASTARD I., BILL OF EXCHANGE, CARRIAGE, CONTRACT, CRIME, EXPENSES, HIRING, IMPRISONMENT, I O U, LAW AGENT, LOAN, PLEDGE, PRESCRIPTION, PROCESS VII., REPARATION, ROAD, SALE, WORKMEN'S COMPENSATION ACT, WRIT.

Burgh records—*Assessment.*—It is incompetent for a town council to prove by parole that an assessment has been

Evidence—continued.

regularly imposed. The only competent evidence is the minute book kept in terms of sec. 61 of the Police Act of 1892, and sec. 76 of the Town Councils Act of 1900. *Provost, &c., of Leven v M'Arthur*, 23, 158.

Indemnity—Verbal promise to keep scathless—Mandate pecuniae credendæ.—The defender verbally promised the pursuer that, if he would sign a bill or bills enabling another to obtain money by means of these being discounted by a bank, of which the defender was agent, the defender would keep the pursuer free from loss thereby. The bills were signed and acted on, and the pursuer was called on by the bank for payment. *Held* (rev. Sheriff-Substitute) that the defender's promise, followed by *rei interventus*, i.e., by the signing and discounting of the bills, was not a cautionary obligation, but an original and substantive agreement or an indemnity, and that it was proveable by parole. *M'Cann v Hogg*, 24, 45.

Writ—Docquet in claimant's books—Limits of correction.—A farmer dealing with live-stock salesmen signed a docquet on his account in their books, bearing that he had examined the account and found it correct, and stating a balance as then owing by him. Two years later he became bankrupt, and the salesmen lodged for ranking on his sequestrated estate a claim beginning with the said balance. The trustee in the sequestration rejected the claim, on the ground that the docquet was no voucher. *Held* that the docquet was a voucher effectual (no fraud in it being alleged) to fix the amount due by the bankrupt to the creditor at its date, subject only to this, that, if error, capable of being pointed out in the account itself, existed in arriving at it, the docquet was not conclusive. *Cromb's Sequestration*, 23, 331.

Written proof—Diary of party founding on it.—Diaries kept by the defender, a farmer, containing, *inter alia*, notes of money payments, *held* evidence of these payments where the entries appeared to have been regularly made, otherwise not. *Campbell v Hamilton*, 24, 387.

Executor. See also INSURANCE, MULTIPLEPOINDING.

Appointment—General donee—Widow liferentrix with power to encroach on capital—Executors Act of 1900, sec. 3.—A husband left a will making his widow liferentrix of all his property, with power to encroach on capital if necessary, but appointed no executor *eo nomine*. In a competition between her and one of his next-of-kin for the office of executor, *held* that the widow as a liferentrix was not a general donee in the sense of sec. 3 of the Executors Act of 1900, and that the next-of-kin must prevail. *Calder v Calder*, 21, 118.

Appointment — General donee—Widow with liferent — Executors Act of 1900, sec. 3.—The widow of a testator who left her his estate for her lifetime and bequeathed what

Executor—continued.

she might die possessed of to named legatees, applied to be decerned executrix-nominate by virtue of the statute. *Held* that she was not a general disponee in the sense of the clause founded on, but might apply to be decerned executrix-dative on finding caution. *Andrew's Executry*, 27, 302.

Competition—Next-of-kin and general legatee under altered will.

—The general legatee under the holograph will of one deceased applied for warrant of confirmation as executrix-nominate *qua* such legatee, but the will was cancelled in pencil and bore a note in pencil, “A new one needed.” It was agreed that the deceased alone knew of the writing. *Held* that in the circumstances the next-of-kin must be preferred to the office of executor. *Mathison, Petitioner*, 26, 292.

Executor-dative—No competition—Condescendence of facts—Confirmation of Executors Act, 1858.

Where a petition for appointment of an executor-dative not showing any objection to the petitioner, and furnishing the bare particulars prescribed by the statute, is intimated and published in terms of the statute, and no competing petition is before the Court, the Sheriff has no option but to grant decree *de plano*. *Henderson, Petitioner*, 22, 186.

Estate—Policy of life insurance—Claim by third party—Interest to object.

Held that an insurance company was not entitled to withhold payment from the executor, duly confirmed, of the assured of the sum due under their policy because of a claim intimated to the company by the holder of the policy, who alleged he had paid the premiums. Condition that latest premium receipt must be exhibited denied effect where no interest averred. *Rolland v Prudential Assurance Co., Ltd.*, 25, 11.

Exhibition of wills—Expenses.

Circumstances in which executors were found liable in the expenses of an action for exhibition of wills at the instance of certain next-of-kin of their deceased author. *Richardson, &c. v Richardson's Trustees*, 22, 337.

Exhibition. See EXECUTOR, SUPERIOR AND VASSAL.**Expenses.** See also AGENCY II., BANKRUPTCY I., V., VII., BASTARD IV., BURGH, ELECTION, EXECUTOR, HUSBAND AND WIFE I.; IV., IMPRISONMENT, LAW AGENT, LEASE IV., MULTIPLEPOINDING, PRESCRIPTION III., PROCESS III., IV., VI., VIII., IX., X., PUBLIC HEALTH, REPARATION IV., RIGHT IN SECURITY, SHIP III., SMALL DEBT ACTS, TITLE TO SUE, WORKMEN'S COMPENSATION ACT V. (h).

I. Questions of Liability,
II. Questions of Amount,

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I. Questions of Liability.

Appeal solely on question of expenses.—A party substantially successful was found entitled to expenses by the Sheriff-

Expenses: Questions of Liability—continued.

Substitute, and an appeal to the Sheriff-Principal on the question of expenses only was dismissed. *Remarks by the Sheriff-Principal on Caldwell v Dykes*, 8 F. 839. *Duffy's Trustees v A B & Co*, 23, 94.

Arrestment to found jurisdiction.—*Held* that the cost of founding jurisdiction is covered by a general award of expenses, if founding jurisdiction is a necessary step in the process, but that, when debtors outwith Scotland could have been sued as owners of heritable property within the jurisdiction, under sec. 6 (d) of the Sheriff Courts Act, 1907, the arrestment was not necessary, and so the pursuers were not entitled to the expense of so arresting. *Wallace & Son v Toye, &c.*, 28, 50.

Co-defenders—Separate defences.—Where a defender had made averments against another party, forcing the pursuer to bring in that party by a supplementary action, the original defender, although ultimately successful in the conjoined actions, was held not entitled to expenses against the pursuer, but only against the co-defender. *Turnbull v Barclay, Curle, & Co., Ltd., &c.*, 27, 169.

Commission to take evidence—Commissioner's fee.—In an incidental application by a commissioner to take evidence, asking decree for payment of his fee and expenses, held, when finding that the agent on whose requisition he had acted was personally liable, (1) that, as the main action was in dependence, the proper and usual course was that taken, viz., to make the claim by motion and not by a separate action, and (2) that the motion need not be in writing if intimated to the party sought to be made liable. *Martin v Martin, &c.*, 29, 244.

Compensation of expenses—Agent's right to decree—Sheriff's discretion.—In an action of damages for slander the defenders were assailed, and in the exercise of the Sheriff's discretion a motion for decree for expenses in name of the agent-disburser was refused, as it might prejudice the pleading of compensation as against expenses in other actions arising out of the same matter, although the parties in the other actions were not all the same. *Carson v McDowall, &c.*, 24, 324.

Compensation of expenses—Agent's right to decree.—Where, in an action for interdict, the defender was ultimately assailed, with expenses, but had committed a breach of interim interdict, and was found liable in the expenses of a complaint of the breach, held, the decree for the expenses of the interdict having been extracted, that the defender could not object to the expenses of the complaint being decreed for in the name of the pursuers' agent, as compensation could not be pled against the pursuers. *Opinion of the Sheriff-Substitute that the complaint was so separate from the original action, and an agent's right to decree for expenses so absolute under rule 99 appended to the Sheriff*

Expenses : Questions of Liability—continued.

Courts Act of 1907, that a motion for such a decree could not be refused. *Spring Motor and Brazing Co., Ltd. v Inglis*, 28, 315.

Defence of pluris petitio.—*Held* that, although a defence of overcharge is sustained, the pursuer is entitled to expenses, and the defender is not, unless he has made a tender. *Wallace & Son v Toye, &c.*, 28, 50.

Extrajudicial tender.—*Held* that an extrajudicial tender, after the case was in Court, of a larger sum than that ultimately decreed for did not exclude the pursuers' right to expenses. Circumstances in which expenses modified to two-thirds. *Craig & Tannahill v Stewart*, 21, 295.

Instalment decree for expenses.—In an action of removing, where the Sheriff-Principal on appeal had granted decree and found the defenders liable in expenses, and the Sheriff-Substitute thereafter, on the cause being enrolled for approval of the auditor's report, granted the defenders the indulgence of an instalment decree, (1) *held* that such amounted to a revision and alteration by an inferior judge of the definite decision of a superior tribunal, and that the interlocutor was incompetent; and (2) motion for instalment decree for expenses refused by Sheriff-Principal. *Archer's Trustees v Alexander & Sons*, 27, 11.

Law agent as pursuer—Right to professional fees.—*Held* that a law agent was entitled to charge professional fees when acting as his own agent in a litigation. *A B v C D*, 29, 166.

Payment of principal claim—No reservation of expenses.—*Held* that when a debt has been sued for, accepting payment of the principal sum sued for without suggestion of compromise, and without waiver or mention of expenses, does not bar the creditor from claiming expenses. *Kemp v Sliman & Fisher*, 30, 170.

Principal debtor in maills and duties—Effect of bankruptcy.—*Held* that a decree for expenses must go forth against the principal debtor in an action of maills and duties in the usual way, though he was an undischarged bankrupt, the effect of the decree not being *hujus loci*. *Gordon, &c. v MacLachlan, &c.*, 28, 39.

Public health—Nuisance prosecution by local authority—Summary Jurisdiction Act, 1908, sec. 52.—*Held* that, as a local authority complaining of a nuisance under the Public Health Act of 1897 was prosecuting in the public interest, no expenses could be found due by it, in the absence of statutory authority for such a finding. *Eastern District Committee of Stirlingshire County Council v Scottish Fish, Oil, and Guano Co., Ltd.*, 26, 19.

Sequestration—Engrossments in sederunt book.—*Held*, by the Auditor of the Lanarkshire Sheriff Court at Glasgow, that, altering the previous practice, the trustee in a sequestration must, from the date of his confirmation, provide for the

Expenses: Questions of Liability—continued.

engrossing of copies of all necessary papers in the sederunt book of the sequestration, that being the meaning of sec. 84 of the Bankruptcy Act of 1856; and that the law agent's duty to engross in it ends, along with his right to fees for engrossing, when he has entered the proceedings up to confirmation of the trustee. *M's Sequestration*, 23, 126.

Successful party at fault.—A defender, who had been successful on the merits in an action of damages for slander, was nevertheless held liable in expenses, because his conduct had caused the litigation. *Wilson v Kerrigan*, 28, 313.

Trustee in bankruptcy.—*Held* that, where the trustee in the sequestration of a husband was unsuccessful in an action by the wife to determine the ownership of articles in the bankrupt's house and ostensibly his, he was liable in expenses like any other litigant. *Clark v Hodge*, 26, 216.

Unincorporated board—Litigation with members—Liability of successful member.—In litigations between the board of management of a combination of parish councils and certain of these councils the council of Kilwinning was successful, but neither party was found entitled to expenses in two of the litigations, which were dismissed because a third decided the issues. The unsuccessful board sued Kilwinning council and other constituent councils for their shares of its whole expenses. *Held* that Kilwinning council was not liable for either the judicial or extrajudicial expenses of the board in the two dismissed actions to any extent, or for any part of the expenses found due and paid to Kilwinning council in the decisive action, or for the expenses of the action to recover these shares of expenses. *Cunningham Combination Board of Management v Kilwinning Parish Council, &c.*, 27, 202.

Witness's fees and outlays—Allowance to party in cause of travelling and subsistence money.—*Held* that a party to a cause, examined as a witness, is entitled to travelling expenses, but not to subsistence money. *Ogilvie v Thiem*, 21, 101.

Witness's fee—Party as witness.—*Held* that a member and official of a limited company (pursuers), successful, and found entitled to expenses in their action, was entitled to a fee as a witness, in addition to travelling expenses, against the defenders, on the ground that where a party appears as a witness in his own behalf there is nothing in the table of fees to exclude him from the rights of other witnesses. *Mason, Ltd. v Crookston Brothers*, 23, 88.

II. Questions of Amount.

Abandonment—Tender of taxed sum less items not incurred.—Where a pursuer abandoned, and the defender asked for expenses as between agent and client, motion refused, following *Lockhart*, 7 D. 1045. Further, held that the pursuer's tender of the account taxed and approved of, but less items not incurred, was enough, it being a condition

Expenses: Questions of Amount—continued.

of right to expenses that they shall be incurred. *A v B*, 22, 108.

Commission—Evidence ultimately not needed.—*Held*, in special circumstances, that party-and-party expenses included the cost of commissions to take evidence to lie *in retentis*, even although one commission was abortive, and the report of the other commission was not put in evidence. *Spite & Co., Ltd. v Bow, M'Lachlan, & Co., Ltd.*, 24, 58.

Commission in London—Glasgow agent's attendance.—Circumstances in which *held* that the expense of a local agent attending a commission to receive documents in London was proper party-and-party expense. *France, Fenwick, & Co., Ltd. v Stinnes*, 27, 290.

Copies of record—Appeal against interlocutory judgment.—*Held*, after an appeal to the Sheriff-Principal against an interlocutor allowing proof, that the party successful in the appeal, and found entitled to the expenses of it, was at that stage entitled to charge two copies of the record, one for his own use and one for the use of the Sheriff. *Murdoch v Mailer, &c.*, 29, 151.

Cumulative decerniture—Scale of taxation—Directions after audit.—*Held* (1) that, in an action with conclusions involving a continuing liability for more than £50, the Auditor, in the absence of a direction to the contrary in the judgment decerning for less than £50 and awarding expenses, was bound to tax such expenses on the higher scale; and (2) that objections to the adoption of the higher scale by the Auditor could not be raised after audit. *M'Gorty v Shotts Iron Co., Ltd.*, 26, 157.

Diligence—Cessio application concurrent with poinding.—*Held* that as against a debtor, where the costs of double diligence (an application for cessio of the debtor and a poinding of his effects proceeding at the same time) were incurred, the cessio expenses were not reasonable and not chargeable. *Clayson & Co. v Kennedy, &c.*, 26, 117.

Extrajudicial expenses in connection with Small Debt cases.—*Held* (rev. Sheriff-Substitute) that an agent is entitled to charge his client extrajudicial expenses in connection with Small Debt cases, according to scale 1 of the Act of Sederunt of 4th December, 1878. *Brown & Murray v Derrick*, 22, 166.

Fees of skilled witness beyond investigation and attendance.—*Held* that the fee to a skilled witness for making investigations and the fee for his attendance at Court giving evidence are all that can be charged against the losing party. Fees for making up results of investigations and fees for attendance at a diet of proof after deponing *disallowed*. *Butters Brothers & Co. v British Diatomite Co., Ltd.*, 23, 6.

Fees of certified medical witness.—*Held* that fees for preliminary investigation must be in proportion to the fee for attend-

Expenses: Questions of Amount—continued.

ance at Court, which at the maximum was £2 2s., and observations on “eminence” of skilled witnesses. *M'Kinstrey v Plean Colliery Co., Ltd.*, 27, 62.

Fees of medical witness—Certification for two proofs on same day.—Objection was taken that the fee allowed by the Auditor to a skilled medical witness was excessive, in respect that he was certified in two workmen's compensation arbitrations which were heard on the same day. *Circumstances* in which the objection was repelled, and the Auditor's report approved of. *Kenny v Murdostoun Colliery Co., Ltd.*, 30, 222.

Fees of skilled witness—Time for moving to certify.—Where a motion for the certification of a skilled witness under Chapter X. (5) (b) of the 1908 Table of Fees was made within eight days after an interlocutor of the Sheriff-Principal (on appeal) disposing of the case, it was refused as not timeous, because it ought to have been made within eight days of the interlocutor of the judge who tried the cause. *Kelvindale Chemical Co. (1904), Ltd., &c. v Galbraith, &c.*, 27, 218.

Fees for skilled witness—Time for moving to certify.—Where a motion for the certification of a skilled witness under Chapter X. (5) (b) of the 1908 Table of Fees was enrolled and intimated within eight days after the date of the interlocutor, but, on account of an appeal, was not brought before the Court till after the eight days had expired, held by Sheriff-Principal that it was not timeous, and that the motion must come before the judge who tried the cause within the eight days. *Opinion* that the dependence of an appeal does not interfere with the power of the judge who tried the cause to grant such a certificate. *MacDonald v Robertson*, 27, 103.

Fees for skilled witness—Time for moving to certify.—*Held* that a motion for certification of a skilled witness must be lodged within eight days after the interlocutor of the Sheriff-Substitute disposing of the cause. *Black v Crawford*, 28, 308.

Husband and wife—Wife's expenses when allowed—Principle of taxation—“Necessary” expenses.—*Held* that, in actions for aliment and for separation and aliment in the Sheriff Court, the Auditor, unless otherwise directed by the Sheriff, ought to follow the rule of the Court of Session and to tax the expenses in cases in which the wife had been successful as between agent and client, but that only to the effect of granting her the necessary expenses in the action. *Wright v Wright*, 26, 111.

Party successful only in part—Modification and taxation in respect of unsuccessful pleas.—Circumstances and procedure in which pursuers, who in their action and a counter action proposed three principal pleas and failed in two of them, were found entitled to modified expenses, and the modifica-

Expenses: Questions of Amount—continued.

tion was applied to their account after taxing off the expense of contesting their bad pleas. *Abel, &c. v Barrowfield Ironworks, Ltd.*, 21, 271.

Precognition of skilled witnesses—Fees.—Circumstances in which for detailed charges for meetings and correspondence with skilled witnesses a single fee was allowed. *Malcolm & Co. v Arrol & Co., Ltd.*, 21, 130.

Precognitions where proof allowed but not taken.—In an action where the pursuer was allowed a proof, but no diet was fixed and no proof was taken, held that the pursuer was entitled to the expense of precognitions under general regulation vii. of the Table of Fees. Circumstances in which the Auditor decided as to the relevancy and expense of the precognitions without the losing party seeing them. *Danks v Watson*, 21, 347.

Precognitions relative to record.—Held that where, after allowance of proof, amendment gave a simple case an entirely different complexion, but the amended case was not remitted to probation, a party was entitled to expenses of recognitions only for the original case. *Buchanan & French, Ltd., &c. v Watson*, 26, 246.

Public Authorities Protection Act, 1893. sec. 1—Action of interdict.—Question whether the enactment allowing such authorities expenses as between agent and client extends to an action of interdict against a public authority. *Scott v Parish Council of Cargill*, 23, 59.

Public authorities protection.—Opinions that the Public Authorities Protection Act, 1893, allowing such authorities expenses as between agent and client, did not apply to a declarator by ratepayers against a town council, which had no pecuniary craves other than for expenses. *Smart, &c. v Provost, &c., of Buckhaven, Methil, and Innerleven*, 30, 328.

Reparation—Small award—Extra judicial settlement—Scale of taxation—Act of Sederunt, 4th December, 1878, sec. 3 (2).—The pursuer, when moving the Sheriff to interpone authority to a joint minute craving the Court to decern for £20, as damages, “with taxed expenses,” in settlement, asked his lordship to order the account to be taxed according to the higher scale in terms of the Act of Sederunt of 4th December, 1878, sec. 3 (2). Held that the motion for any variation of or addition to the decree jointly craved was incompetent, and that the lower scale applied, the principal damages decerned for being not more than £25. *Stewart v North of Scotland Electric Light and Power Co., Ltd.* 23, 189.

Reparation—Small award—Agent and client account.—The agent for the pursuer of an action for £250 damages withdrew before its conclusion, which was a decree for only £5. In his action for his professional account, held that, as there was no direction by the Court in the first action, the scale applicable to his claim was the lower, in accordance with

Expenses: Questions of Amount—continued.

the 8th and 2nd of the general regulations prefixed to the Table of Fees of 10th April, 1908. *Morrison v M'Master*, 27, 156.

Reparation—Small award—Agent and client account—Application to defender's agent of Regulations II. and VIII.—The agent for the defender in an action for delivery, or alternatively £30, and for £30 of damages, together £60, sued his client for payment of his account relating to the litigation. *Held* that he was entitled to remuneration on the higher scale under the general regulations prefixed to the Table of Fees of 10th April, 1908, though (presumably through his exertions) the award in the litigation was practically one for damages of only £25 amount. *Welsh v M'Millan*, 28, 305.

Reparation—Small award—Large counter claim—Scale of taxation—Act of Sederunt of 10th April, 1908, General Regulation II. (3).—The pursuer in an action of damages obtained decree for less than £50, but was successful in repelling counter claims amounting in all to £166. *Held* that the counter claims could not be taken into account in determining the scale of taxation, and that, in the absence of a direction by the Sheriff, the Auditor was correct in taxing the expenses on the lower scale under the regulation. *Sinclair v Wood*, 28, 359.

Service copies—Printing.—*Held* that in a poinding of the ground the pursuer was not entitled to copying fees for twenty-four service copies of the petition and a certified copy for the process, but only to the cost of printing them. *Colvil's Trustees v Bruce, &c.*, 23, 8.

Witness's fees and travelling allowances—Party as witness.—*Held* that the successful party cannot charge against the losing party any other allowances to witnesses than the fees and travelling charges prescribed by the Act of Sederunt of 10th April, 1908, Chapter X., sec. 5 (c)—maintenance, when allowed by the Act of Sederunt, being expressly mentioned. *Opinions* as to whether (1) as regards witnesses brought from a distance “reasonable travelling charges” includes maintenance during detention at the place of trial; and (2) a party to the cause giving evidence therein is as regards fees like any other witness. *Dalton & Co. v Boyle & Co.*, 26, 53.

Witness's fees as party-and-party expenses—Maritime collision—Detention ashore or examination on commission.—*Held* that whether the whole cost of keeping a witness ashore to give evidence in Court in a maritime collision case, or only such a sum as represents the cost of executing a commission to take his evidence, should be allowed as a proper party-and-party expense, is a question of circumstances in each case. Such cost *allowed* as regards certain witnesses, and *disallowed* as regards others. *Ellerman Lines, Ltd. v Clyde Navigation Trustees, &c.* *Glasgow and Newport News Steamship Co., Ltd. v Clyde Navigation Trustees, &c.*, 27, 285.

Fee and Liferent.

Meliorations by liferenter—Presumption.—*Held* that a tradesman who had done painter work on heritable subjects for the liferenter thereof had no claim for payment against the fiars, the presumption being that the work was done for the liferenter to enhance his own interest as liferenter, he, besides, having ordered it, and no benefit to the fiars having been proved. *Leitch v Macintosh's M.C. Trustees*, 23, 36.

Filiation. *See* BASTARD.

Fishing. *See also* REPARATION I., RIVER, SHIP III., IV.

Sea fishing—Damage to gear—Sea Fisheries Act of 1885—Whether statutory remedy exclusive.—Fishermen who have applied to a Fishery officer in terms of sec. 7 of the Sea Fisheries Act of 1885, in respect of damage to their gear by other persons, are not precluded thereby from suing for damages in common form. *Ferrier, &c. v Coull, &c.*, 22, 263.

Sea fishing—Damage to gear—Relevant averment of fault or statutory offence—Salvage of gear—Fishery officer's report.—Owners of a fishing boat sued owners of another fishing boat for damages for illegally (referring to the Sea Fisheries Acts) and improperly interfering with their gear. *Held* that there was here no relevant ground for liability at common law in respect of fault, or negligence, or otherwise; and that there was no case under the Acts—the plea of interference in good faith for salvage, which is allowed by the Acts, being supported by the fishery officer's report, which was not attacked. *Ferrier, &c. v Coull, &c.*, 22, 263.

Fixture. *See* LEASE VI.

Food and Drugs. *See* PUBLIC HEALTH, TITLE TO SUE.

Foreign. *See* ALIENS ACT, DEBTS RECOVERY ACT, ELECTION, JURISDICTION, RES JUDICATA, SHERIFF, SHIP II.

Franchise. *See also* ELECTION.

County vote—Trustees paid and fully empowered.—*Held* that trustees acting under testamentary writings which contained wide powers, *inter alia*, a power of sale, and receiving legacies of £200 each per annum for their services, were not entitled to be enrolled on the county voters' roll as joint proprietors of land held by them under the trust. *Seafield Trustees v Gerrard*, 30, 3.

Municipal vote—Ownership—Annuitant.—An annuitant to the extent of £250 on the general estate of one deceased,

Franchise—continued.

administered by trustees, *held* not to be joint proprietor of a heritable subject, so as to be entitled to the franchise in respect thereof. *Innes v Walsh*, 30, 5.

Fraud. *See HIRING II., LOAN, PLEDGE, POOR, SALE I., VITIOUS INTRO-MISSION.*

Friendly Society. *See also CONTRACT I., SUCCESSION, TITLE TO SUE.*

Benefit to lunatic member—Exclusion of law Courts—Arbitration.

—*Held* that an action by the wife of a member (whose title to sue was approved) against a friendly society for the sick benefit alleged to be due after the removal of the member to a pauper lunatic asylum must, according to the rules of the society, be referred to arbitration, and action *dismissed* as incompetent. *M'Cabe v Scotch Power Loom Carpet Trades' Protective and Provident Association*, 25, 72.

Benefit conditional on consent of central body—Consent withheld

—*Dispute—Exclusion of law Courts—Friendly Societies Acts of 1896, sec. 68, and 1908, sec. 6.*—A member of a friendly society, duly qualified for a certain benefit, payment of which was subject to the consent of the general committee of the society, could not get that consent because that committee would not take up and consider his claim. There was no question for arbitration. *Held* in an action against the member's branch of the society that he was entitled to decree. *Macfarlane v Perth Branch (No. 2155) of the Locomotive Steam Enginemen and Firemen's Friendly Society*, 27, 223.

Benefit conditional on consent of central body—Consent withheld

—*Dispute—Exclusion of Courts of law—Friendly Societies Acts of 1906, sec. 68, and 1908, sec. 6.*—A member of a friendly society, who was *prima facie* entitled to a benefit, subject to the consent of a central body, was offered a smaller sum by that body, and refused it. An arbitration was then constituted. The member sued at law for payment. *Held* that the offer and refusal established a "dispute," which excluded the law Courts. *Campbell v Perth Branch (No. 2155) of the Locomotive Steam Enginemen and Firemen's Friendly Society*, 28, 135.

Forfeiture—Death before lapse of period—Third party's claim.

—Circumstances in which *held* that a member of a friendly society who was in arrear with his contributions, and thus ceased to be entitled to pecuniary benefit to himself, but who died before the time when non-payment would have forfeited his membership, was still a member, and a benefit covenanted for his widow and next-of-kin was not forfeited. *Mackenzie v Glasgow Licensed Trade Employees' Friendly Society*, 24, 316.

Inspection of society's books—Minutes of directors—Friendly Societies Act, 1896, 59 & 60 Vict. cap. 25, sec. 40.—Under the Friendly Societies Act members and persons having an interest in the funds of a registered society or branch are

Friendly Society—*continued.*

entitled to inspect “the books at all reasonable times” at the places where they are kept, with a certain exception as to loan accounts. *Held* that “the books” of a society did not include the minute books in which the proceedings of the directors were recorded; and a complaint against a society which had refused to submit such books for inspection dismissed. *Pollock v Scottish Legal Life Assurance Society, &c.,* 25, 184.

Furthcoming. See also ARRESTMENT VI., DEBTS RECOVERY ACT.

Trust—Liferent—Apportionment of expenses between capital and income—Discretionary power in will—Valid exercise of power—Arrestment in hands of trustees by executor of creditor of liferentrix—Accounts lodged showing liferentrix overpaid—Objections thereto by creditor's executor.—M during his lifetime advanced moneys on I O U's to Mrs. H, M being one of the trustees on the estate of the deceased Mr. H, of which estate Mrs. H was liferentrix. After M's death his executor brought an action against Mrs. H for the amounts contained in the I O U's, and, having obtained decree, used arrestments in the hands of the late Mr. H's trustees for any sum then due to Mrs. H from the trust estate *qua* liferentrix. In an action of furthcoming the trustees produced their accounts, showing that at the date when arrestments were used no sum was due to Mrs. H from the trust, but, on the contrary, she was then overpaid. The executor lodged objections to the trustees' accounts. *Held* (1) that the executor was in the circumstances barred *personalis exceptione* from objecting to the statement of the trust accounts in the interest of the late M, seeing that M had been to the date of his death one of the trustees and a member of the firm of law agents of the trust, and as such responsible for the manner in which the accounts were stated; (2) that the objections were, in any view, inept, as the will of the late Mr. H contained a power to his trustees to apportion expenses between capital and income. Further observed by the Sheriff-Principal that an arresting creditor must take trust accounts to the date of arrestment as the trustees state them, and cannot demand vouchers or investigate the transactions. *Muir's Trustee v Hamilton's Trustees,* 24, 260.

Game. *See also LEASE II., V., PROPERTY.*

Rabbits—Landlord's liability for damage to crops—Tenant's acquiescence.—In an action by a farm tenant against his landlord for damages resulting from an undue increase of rabbits on the estate, absolvitor was granted, because the tenant did not show that his statutory powers of killing ground game had been exercised and proved insufficient, or even that their exercise had been repressed by the landlord. *Cowie v Gordon*, 22, 29.

Poaching at night—Farmer's nominee and others—Stake netting—Ground Game Act, 1880, sec. 1.—In a prosecution of one holding an agricultural tenant's written authority, and of two other men, under the Night Poaching Act, 1828, the complaint accused them of unlawfully entering on the tenant's land with nets for the purpose of taking game. A net was found set, with the men beside it. No capture of game or rabbits was proved, and it was not made out that any but the tenant's nominee had done any act, the others being there professedly only to carry home the bag. *Held* that the right conferred by the Ground Game Act on the tenant and his nominee entitled them, concurrently with the owner of the land, to kill ground game at night with nets—it being assumed that no other game would be caught by a net—and that the nominee was therefore not guilty of the offence. The charge against the others was held not proven. *Mitchell v M'Kay, &c.*, 27, 100.

Gaming. *See AGENCY III., CONTRACT I., WAGER.***Glebe.** *See CHURCH, PROPERTY.***Goodwill.** *See CONTRACT III., PARTNERSHIP, TRADE NAME.***Ground Annual.** *See also INTEREST.*

Personal obligation—Effect of discharge in bankruptcy—Held that a personal obligation in a contract to pay a ground annual is discharged by the obligant obtaining his discharge in bankruptcy. *Shaw, &c. v Emery*, 24, 333.

Periodic duplication—Interpretation of duplication clause.—Where a contract of ground annual stipulated for payment of a ground annual for each of six pieces of ground thereby disposed, "together with a duplication of each of said several ground annuals every nineteenth year, but that for that year only, over and above the annual year's ground rent," *held*, in an action for payment of three times the annual rent on the occurrence of a nineteenth year, and following the interpretation of the feu disposition in *Earl of Zetland v Carron Co.*, 3 D. 1124, that a sum equivalent

Ground Annual—*continued.*

to three years' ground annual was payable every nineteenth year, although at previous periods only twice the annual rent had been accepted. *Taylor, &c. v Murdoch, &c.*, 28, 366.

Guarantee. *See Cautionry.*

Guardian. *See Husband and Wife I., Judicial Factor, Jurisdiction, Parent and Child.*

Harbour. *See also* PRESORIPTION III., REPARATION II.

Removal of wreck—Relative rights and liabilities of harbour authorities and shipowners where a wrecked vessel has become an obstruction in a harbour—Powers and duties of harbour authorities under sec. 56 of the Harbours, Docks, and Piers Clauses Act, 1847.—Harbour trustees petitioned for an order on the defender to remove a wreck within their bounds, said to be an obstruction, and, failing his removing it, for warrant to remove it themselves, and to charge the defender with the cost so far as not met by the sale of the wreckage. The defender pleaded, *inter alia*, that the action was irrelevant, and that there was no compulsitor on him either at common law or by statute to remove the wreck. The action was held irrelevant, and dismissed. *Montrose Harbour Trustees v Fletcher*, 21, 310.

Heritable or Moveable.

Husband and wife—Jus relictæ—Act 1661, cap. 32.—A loan on a receipt agreeing to pay interest annually at 3 per cent., and repayable on demand, held heritable, and not subject to *jus relictæ*, the interest having been paid annually. *Dawson's Trustees v Dawson*, 9th July, 1896, 23 R. 1006; and *Bennett's Executrix v Bennett's Trustees*, 28th February 1907, 14 S.L.T. 427 and 803, followed. *Wilson v Skinner*, 23, 217.

Lair in proprietary cemetery—Title to sue.—The eldest son of the eldest son of the owner of lairs in a proprietary cemetery, claiming under the regulations of the cemetery company to have the right of property in the lairs as heir-at-law of the owner, who had died intestate, and whose eldest son had also died intestate, sued his aunt and her husband's testamentary trustees for delivery of the lair certificates, as well as for damages in respect of their use of the lairs. Held that he had no title to sue—the regulations of the company being ineffective to supersede the general law of succession, and the interest of the parties in the lairs being merely a right of sepulture and moveable property. *M'Innes v Ferguson, &c.*, 28, 198.

Heritor. *See* CHURCH.

Highway. *See* ROAD.

Hire-purchase. *See* DEPOSIT, HIRING II., LEASE IV.

Hiring. *See also ASSESSMENT I., CARRIAGE, CONTRACT II., III., LEASE, MASTER AND SERVANT, PLEDGE, REPARATION I., SHIP I., IV., V.*

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I. Of Moveables.

Bowing contract—Summary ejection of bower—Is a bower a servant?—Is he subject to summary ejection?—The pursuer and defender entered into a bowing contract verbally for a year from Martinmas, 1908. On 27th May, 1909, the pursuer dismissed the defender for alleged fault, maintaining that as bower he was his servant. The defender refused to accept dismissal and to remove from the premises. The pursuer then brought an action for summary ejection. *Held* (*rev. Sheriff-Substitute*) that in the circumstances summary ejection was not a competent remedy. *Brown v M'Cubbin*, 25, 370.

Lessee bound to repair—Repairer's retention.—The owner of an advertising machine and wagon gave them out on a contract of hire-purchase, under which the lessee was bound to keep them in repair. He sent them to a repairer, who retained them because his account for the repairs was not paid. In an action by the owner against the lessee and the repairer for delivery, *held* that the pursuer was entitled to decree therefor against the lessee, but not against the repairer without paying his account, in view of the clause of repair in the contract. *Sinclair v Fleming, &c.*, 25, 268.

Motor car—Injury—Burden of proof.—A motor car was let on hire by the pursuers to the defenders and by them to F. It needed repairs, and the defenders took possession. While they had it a milk cart and the car collided with each other. The pursuers sued the defenders for reparation in respect of damage to their car. *Held* that the defenders must prove their freedom from fault or negligence, seeing that no calamity or pure fault of a third party was alleged, and thus that the pursuers need not show fault or negligence of the defenders' servant while driving the car. *Weber & Co. v Liddle & Johnston*, 27, 220.

Railway wagons—Charges for detention—Triennial prescription.—Railway companies sued a customer upon an account consisting of similar successive charges for delay in returning wagons belonging to the pursuers and made use of by the defenders after the completion of a contract for haulage of coal or ironstone over the pursuers' railways. The pursuers made no charge for wagons unless there was detention, but when this occurred a fixed charge was made under the Railway Rates and Charges No. 22 (Glasgow and South-Western Railway, &c.) Order Confirmation Act, 1892, 55 & 56 Vict. cap. 60. *Held* that the items of the account which were more than three years old fell under the triennial pre-

Hiring: Of Moveables—continued.

scription. *North British Railway Co., &c. v Summerlee Iron Co., Ltd.*, 29, 306.

Railway wagons and sheets—Charges for detention—Triennial prescription—Hire or damages.—A railway company in October, 1913, sued a customer for 10s. 6d. “demurrage on wagons and sheets” incurred in January and September, 1910, and the triennial prescription was pled in defence. *Held* that the claim was not for damages, but for the payment of services under the terms of the company’s Act of Parliament, and that the prescription applied to it. *Caledonian Railway Co. v Dow*, 30, 16.

II. Hire-purchase.*Pledge by lessee—Vindication from purchaser of pawn ticket.*—

A piano was hired out by the pursuers under an agreement of hire, with option of purchase, to a hirer, who pawned the instrument and sold the pawn ticket to the defender. The defender uplifted the piano from the pawnbroker, paying him the amount of his advance and profits. On the pursuers demanding delivery of the piano, the defender refused to give it up without repayment of the sums paid by him to the hirer and the pawnbroker. In an action at the instance of the true owners, *held* that the defender had no right or title to retain the piano on a demand for its restoration by the true owners. *Ewing & M’Intosh v Rankin*, 24, 127.

III. Of Services.*Company manager—Breach of contract—Counter claim—Relevancy.*—

Circumstances in which one, averring a breach of contract to employ him as technical manager of a company for working a new patent by refusal so to employ him, was allowed a proof of his damage upon admission of the refusal; and a counter claim in respect of loss by his incompetence was repelled, inasmuch as there was no relevant averment of the service he contracted to give, or of the failure to perform it, or of the loss resulting therefrom. *Observations* upon counter claims under sec. 55 of the Sheriff Courts Act, 1907. *Lohmann v Lohmann Manufacturing Co., Ltd.*, 28, 191.

Farm grieve—Death of master—Tacit relocation.—The master of a farm grieve, engaged from Whitsunday to Whitsunday, died on 12th May, 1906. *Held* that the hiring and right to wages came to an end at Whitsunday, 1906, tacit relocation having no application where the contract was ended by the master’s death. *Marshall v Gordon*, 23, 151.

Hydropathic establishment doctor—Indefinite term of engagement—Dismissal—Reasonable notice.—The owner of a hydropathic engaged a doctor to act as consulting residential physician and specialist at a salary of £300 per annum and a share of the profits from the medical department of the

Hiring: Of Services—continued.

hydropathic. After six weeks' service the doctor was dismissed, without any fault being alleged against him, and was paid a month's salary in lieu of notice. *Held* that he was entitled to three months' salary in lieu of three months' notice, as being reasonable notice under the circumstances. *Ogilvie v Thiem*, 21, 101.

Salesman—Liability for loss of stock—Implied security.—A salesman in a retail shop was taken bound for deficiencies in the stock of the department of which he had charge, and lodged £20 with his employers as agreed security. Later he was given the charge of another department as well, and lodged £30 additional, but without agreement relative thereto. A loss of stock of the second department took place, and the salesman's service terminated. He was repaid the £20 lodged under the agreement, but the £30 was retained against the loss. *Held*, in an action for payment of the £30, that, as there was no agreement relative to it, and the previous agreement could not be extended to it by implication, and as no fault or other legal liability or debt of the salesman was averred, the payment could not be withheld by the employers. *Philip v Vale of Leven Co-operative Society*, 25, 210.

IV. Locatio Operis.

Building contract—Specification departed from on ground of custom.—Wrights sued for a balance of the price on a contract for work on a new building. The balance was retained on the ground of their work and material being grossly disconform to the specification. The pursuers pled (1) the architect's acceptance of these; and (2) a custom of trade to tender for first-class material and work, but to supply what was inferior, such as would correspond to the low prices in the tender. *Held* irrelevant to plead the architect's acceptance of what he had no authority to accept, and that the defender was entitled (having taken over the work as completed) to have the payment therefor reduced from the contract prices to the *quantum meruit*. *Graham & Son v Dalrymple*, 22, 180.

Risk—Repairing finished.—*Res perit domino.*—A motor cycle was repaired by mechanics in their premises, and at the owner's request its petrol tank was then filled by them with petrol. The cycle was tried on the spot by the owner, but it failed to work and an employee of the mechanics tried it, when it caught fire from some unexplained cause, and was destroyed. In an action for damages by the owner against the mechanics *held* that, as the mishap occurred after their contract was completed, the onus of proof was not on them, but on the owner, and he had shown no fault or negligence on their part to make them liable. *Falconer v Ross & Co.*, 28, 146.

Horse. *See REPARATION II. (b), SALE II. (b); III.*

Husband and Wife. *See also ALIMENT, ARRESTMENT II., V., BANKRUPTCY I., II., V., EXPENSES II., HERITABLE OR MOVEABLE, IMPRISONMENT, LEASE I., II., IV., PROCESS VII., RIGHT IN SECURITY, SMALL DEBT ACTS, TITLE TO SUE, WRIT.*

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I. Rights and Liabilities of Spouses.

Aliment—Action for permanent aliment in Sheriff Court—Custody of children—Access to child.—*Held* that an action at the instance of a wife against her husband for permanent aliment is not competent in the Sheriff Court, but that an action for interim aliment is competent. *Held* also that decree for interim access to a child is competent in absence, but that inquiry should be ordered before a permanent order for custody or access is given. *Macdonald v Macdonald*, 24, 271.

Aliment—Adherence—Sheriff—Sheriff Courts Act of 1907, sec. 5 (1) and (2).—In an action by a wife for aliment from her husband so long as he should refuse to receive and maintain her, *opinion* that actions of adherence, being declarators, but not “actions the direct or main object of which is to determine the personal status of individuals,” are competent before the Sheriff under sec. 5 (1) of the Sheriff Courts Act of 1907, and that, conclusions for adhering, if necessary, being competent, permanent aliment can be decreed for by him by virtue of sec. 5 (2). *Samuel v Samuel*, 25, 99.

Aliment—Desertion by husband—Sheriff—Sheriff Courts Act, 1907, sec. 5 (1) and (2).—*Held* competent to award permanent aliment to a deserted wife, without conclusions for separation. *Macfarlane v Macfarlane*, 26, 48.

Aliment—Interim aliment—Sheriff—Sheriff Courts Act, 1907, sec. 5 (2).—*Held* (following *Macdonald v Macdonald*, 24 Sh.Ct.Rep 271) that it is competent to a Sheriff to award only interim aliment to a wife against her husband, unless when decree of separation is granted. *Scott v Scott*, 27, 5.

Curatorial power—Action to remove wife from husband's residence—Caution or obligation for aliment.—A husband *held* entitled to petition the Court for warrant to remove his wife from his house and interdict her from returning, without being ordered to find caution for payment of aliment to her, but was ordained before extract to lodge a probative and formal deed binding himself to make payment to the defender of a certain weekly aliment. *Angus v Angus*, 21, 301.

Curatorial power—Action to remove and interdict wife from husband's residence—Caution or obligation to pay aliment—Wife's expenses.—A husband *held* entitled to remove his wife from his house and interdict her from returning, on his finding caution or lodging in Court before extract a

Husband and Wife: Rights and Liabilities of Spouses—continued.

probative and formal deed binding himself to make payment to the defender of a certain weekly aliment. *Observations as to wife's expenses.* *Barlow v Barlow,* 22, 290.

Curatorial office of husband—Title of deserted wife to sue alone in affiliation cause—Proof as to competency.—A married woman raised in her own name alone an action for filiation and aliment of her bastard against the alleged father, and stated that her husband could not be found to consent to the action, and had deserted her years before, though he had been in this country till after the child's birth. *Proof allowed before answer.* *Watt v Moffat,* 27, 356.

Præpositura—Liability for antenuptial furnishings to wife.—*Held* that a husband, whose wife had no separate estate and brought no estate to her husband on her marriage, was liable for goods which formed part of her wedding outfit, and were of a kind which her husband would have had to supply to her. *Muirhead & Co. v Bishops,* 24, 26.

Præpositura—Liability of husband for antenuptial furnishings to wife—Married Women's Property Act, 1877, sec. 4.—*Held (rev. Sheriff-Substitute)* that a husband was not liable for the price of furnishings and clothes bought by his wife before marriage, to be used by her after marriage, as by virtue of the Married Women's Property Act of 1877 they never became the husband's property. *Cranston & Elliot, Ltd. v Pile,* 24, 383.

Præpositura—Unauthorised purchase by wife.—A wife, living with her husband and children, gave a clothier a first order for boys' clothes of considerable value through her daughter, and, having got the goods, pawned them. In an action against the husband for the price, *held* that, in the circumstances, the ordinary presumption that the wife was authorised to contract for her husband was rebutted. *Clark v Noble,* 28, 303.

II. Wife's Property.

Earnings by her—Married Women's Property Act, 1877.—A wife living with her husband continued to work for some time as a factory worker, and thereafter continuously, till within a year of her death, as a washerwoman, both by going out to houses to wash and also by washing for others at her husband's house. *Held* that the money in possession of her trustees under her trust disposition and settlement consisted, to the extent of at least £100, of savings by her from the earnings of her husband, or from sums not being part of her separate estate but in her possession from time to time as agent or manager for her husband. *Valentine v Valentine's Trustees,* 26, 299.

Jus mariti—Presumption—Marriage before 1881.—In an action by a son for payment of legitim out of the moveable estate of his mother, who had been married to his father before 1881, *held (rev. Sheriff-Substitute)* that

Husband and Wife: Wife's Property—continued.

estate held in her name could not be presumed to have fallen under the husband's *jus mariti*, and that proof of how it was acquired was necessary. *Hall v Macdonald, &c., 23, 13.*

Right of administration—Furniture—Desertion by wife
—Competency of averments of cruelty in action in
the Sheriff Court.—Where a married woman owned furniture from which her husband's *jus administrationis* was not excluded, and where she averred cruelty on the part of the husband, and that he had agreed to her living apart, *held* that the averments of cruelty were incompetent in an action in the Sheriff Court, and that, as she had failed to prove that he had agreed to her living apart, she was not entitled to delivery of her furniture. *Cunningham v Cunningham, 21, 216.*

Right of administration—Husband's right to retain wife's moveables.—A wife, on the averment that her husband had deserted her and broken up the matrimonial home, sued him for delivery of certain articles which she said were her property. *Held* that the husband's *jus administrationis* entitled him to keep possession of them without showing cause. *Murdoch v Murdoch, 21, 305.*

Right of administration—Dispensing with lunatic husband's consent—Sheriff.—*Held* that a Sheriff could, by virtue of sec. 5 of the Married Women's Property Act of 1881, dispense with the consent of a lunatic husband to his wife's deeds affecting her heritable estate. *J. B. v A. B., 26, 50.*

Right of administration—Dispensing with husband's consent to deed—Desertion by disappearance—Married Women's Property (Scotland) Act, 1881 (44 & 45 Vict. cap. 21), sec. 5.—In an application in 1910 by a wife to dispense with her husband's consent to a deed relating to her heritable estate, *held* that the husband, a sailor, who had not been heard of since writing to his wife from Australia in 1882, had deserted her in the sense of sec. 5 of the Married Women's Property (Scotland) Act, 1881, although from the evidence the probability was that he had been drowned, or died from some other cause, shortly after writing his wife. *Jamieson v Jamieson, 26, 297.*

III. Marriage Contract.

Provision of liferent—Jus relictæ—Implied discharge.—By antenuptial marriage contract a wife was provided, in the event of the husband's predecease, with a liferent of the estate conveyed by him. The contract contained no express exclusion of the widow's legal rights. In the event which happened the fee of the estate conveyed by the husband was undisposed of and fell into intestacy. The wife survived the husband and enjoyed the liferent provided to her. After her death her representative claimed

Husband and Wife: Marriage Contract—continued.

jus relictæ out of the estate conveyed by her husband. *Held* that the claim was impliedly excluded by the contract. *Murdoch's Trustees v Murdoch, &c.,* 29, 308.

IV. Separation.

Expenses of wife's law agent. — Circumstances in which, the parties having resumed cohabitation after the wife had raised an action against the husband, her law agent was found not entitled to sist himself in order to obtain decree of expenses against the husband. *Murdoch v Murdoch,* 21, 305.

Expenses of wife's law agent—Her action against husband withdrawn. — *Held* that a husband was not liable for the expenses incurred by his wife to her lawyer in an action of separation and aliment against the husband, when the action was ill-founded and was dismissed by consent of the wife. *Paterson & Salmon v Quarrie,* 25, 212.

Cruelty—Habitual drunkard not incapable of managing his affairs. — A wife sued for separation from her husband, and proved that he was given to excessive drinking and that his business had dwindled away, but not that he could not give orders for conducting it. *Held* (rev. Sheriff-Substitute) that, as she had failed to prove his incapacity, she had not established that he was a habitual drunkard within the meaning of sec. 3 of the Habitual Drunkards Act, 1879, and so could not take benefit by sec. 73 of the Licensing Act of 1903, making habitual drunkenness equivalent to cruelty. *Millar v Millar,* 28, 123.

Hypothec. See LEASE IV.; also ASSESMENT IV., BANKRUPTCY III., LAW AGENT, SHIP II., SMALL DEBT ACTS.

Implement. *See CONTRACT III., DISCHARGE, LEASE I., PROMISE.*

Implied Contract. *See BANKRUPTCY I., VI., CONTRACT II., LEASE, MASTER AND SERVANT II., PARTNERSHIP, SALE III.*

Imprisonment. *See also MEDITATIO FUGÆ, POINDING, SMALL DEBT ACTS.*

Aliment—Arrears under decree.—*Held* that it was competent for a woman holding a decree for aliment of her illegitimate child to enforce by imprisonment payment of arrears of the aliment due prior to the date of the decree. *Park v Roberts*, 22, 322.

Aliment—Arrears under agreement.—*Held* that an application for imprisonment, following on a decree for arrears of aliment due under an agreement, was incompetent. *M'Allister v M'Allister*, 23, 3.

Aliment—Charge to pay—Pain of imprisonment.—*Held*, where a charge to pay aliment contained the words “under pain of imprisonment,” that the charge was bad as proceeding without warrant, and a consequent application for warrant to imprison refused. *Shanks v Shanks*, 27, 57.

Expenses of process—Composite action.—Where decree was granted for (a) inlying expenses and aliment, and (b) damages for breach of promise and seduction, *held* that the expenses in the composite action were not “expenses of process” within the meaning of the Civil Imprisonment (Scotland) Act, 1882, sec. 4, and could not find an application for warrant to imprison. *Rendwick v Blair*, 27, 210.

Expenses of process—Composite action for divorce and aliment.—In an action for divorce and aliment, decree was granted (a) giving divorce for desertion, (b) for certain sums for the aliment of young children whose custody was given to the mother, and (c) for expenses. *Held*, in an application to imprison the defender for wilful failure to pay the aliment and expenses, that these expenses were not “expenses of process” within the meaning of the Civil Imprisonment (Scotland) Act, 1882, sec. 4, not being expenses of an action mainly for aliment. *Mitchell v Mitchell*, 28, 183.

Expenses—Crave for aliment, &c., abandoned.—*Held*, where a wife suing for separation and aliment from her husband departed from these conclusions after obtaining a decree for interim expenses, that she could not get a warrant for imprisonment in respect of failure to pay the interim expenses. *Smith v Smith*, 30, 178.

Imprisonment—*continued.*

Wilful failure to pay debt—Presumption rebutted—Arrestment of wages followed by application for imprisonment.—A defender's wages having been arrested, and an application for warrant to imprison instituted prior to the collection of the arrested fund, held that there was no wilful failure to pay, and the application dismissed. *Renwick v Blair*, 27, 210.

Industrial Society.

Rules—Construction—Retention of capital against debt.—A rule of a distributing industrial society compelled a member desiring to withdraw share capital to liquidate any debt due to the society before withdrawing therefrom, and entitled the managing committee to suspend payment of share capital for six months. Another rule enacted that, if any member allowed a balance on his account with the society to remain unpaid beyond three months, his share capital should be taken and applied to liquidate it. The society sued a member for the price of goods supplied more than three months before action, and the member counter claimed for compensation of his share capital or payment of the same. Held that the rule second mentioned applied to the circumstances, and overrode a suspension resolved on by the committee in virtue of the other rule mentioned. *Jedburgh Co-operative Society, Ltd. v Dunlop*, 29, 175.

Innuendo. See SLANDER.

Insurance. See also CONTRACT III., EXECUTOR, LEASE IV., MASTER AND SERVANT II.

Accident insurance—Construction of policy—“Cyclist.”—The pursuer, as executrix of her deceased husband, sued the defenders for the contents of a policy of insurance against accidents which the deceased had effected with them. While the deceased was cycling on a bicycle propelled by a spirit motor, he collided with a cart, and was so injured that he died the same evening. Held that on a sound construction of the policy the company were liable, as a motor cyclist was included in the term “cyclists” insured by the policy against fatal accidents by collision with other vehicles. *Sherley-Price v Mutual Property Investment and Accident Co., Ltd.*, 21, 179.

Accident insurance—Coupon—Whether “omnibus, tramcar, cab, or Irish jaunting car” includes hired wagonette.—Held that the words of an accident insurance coupon were to be taken in the plain meaning and obvious intent, and that a wagonette, even if wagonettes were the only vehicles for hire at the place, did not come under the expression in the coupon, “omnibus, tramcar, cab, or Irish jaunting car (licensed for public hire),” accidents to which were insured against by the coupon. *Lyon-Bennett v Mutual Property Investment and Accident Co., Ltd.*, 21, 362.

Insurance—continued.

Fire insurance—Contract to insure goods held in trust.—A miller, who received other persons' hay to be chopped, issued invoices therefor, stating that "all goods held in trust are covered by insurance against fire." A fire having destroyed goods of customers, *held*, in ranking claims under the miller's sequestration in bankruptcy, that the invoices imported a contract to insure for the customer's benefit, and not only for the miller's, and that the customers were entitled to preference on the sums recovered from the insurance company, then in the trustee's hands, for the value of their goods destroyed by fire in the miller's premises. *Leckie's Sequestration*, 23, 23.

Industrial insurance—Transfer of policy—Notice under collecting Societies Act, 1896.—*Held* that (1) the intimation of the transfer of a policy by one insurance company to another, in terms of the Collecting Societies Act, 1896, released the original company from any liability thereunder; and (2) the acceptance of payment of a premium by an agent of the original company after the date of such transfer did not revive their liability under such policy. *Scanlan v Britannic Assurance Co., Ltd.*, 23, 34.

Life insurance—Constitution of contract—Error—Policy over wrong life.—*Held* that a father was entitled to repayment of premiums paid by him as on a policy of insurance over the life of his daughter A, where the policy had been, by mistake of the insurers, made out in name of his daughter B, dead before the proposal for insurance was made. *Davis v Salvation Army Assurance Society, Ltd.*, 30, 6.

Life insurance—Insurable interest—Married daughter insuring her father—14 Geo. III. cap. 48.—Question whether by Scots law a daughter (with a husband alive) has an insurable interest in her father's life, he not being debtor to her by marriage contract or other special obligation. *Miller v Pearl Life Insurance Co., Ltd.*, 23, 334.

Life insurance—Representation—Overstatement of age—Claim for addition to sum assured proportionate to excess of premium paid.—A daughter insuring her father's life overstated his age by three years. On his death she sued upon the policy, not only for payment of the sum assured, but for an addition corresponding to the sum which should have been assured by the higher premium. *Held* that, standing the contract, the extra claim was untenable. *Miller v Pearl Life Insurance Co., Ltd.*, 23, 334.

Life insurance—Representation—Warranty of assured person's health.—A daughter effected an insurance on her father's life, and in the proposal by her stated that he was in good health and not afflicted by disease. The policy declared the proposal to be the agreed basis of the contract, and stipulated that the policy should be void "if it be discovered that at the date of this policy the assured was afflicted with any mental or bodily disease," or "if any untrue averment

Insurance—continued.

be contained in " the proposal. *Held* that the statements in the proposal constituted a warranty entering into the contract, it being immaterial what was the actual state of knowledge of the party making them, and that, as the life assured was in fact afflicted with serious bodily disease at the date of the policy, action on the policy could not be maintained. *Miller v Pearl Life Insurance Co., Ltd.*, 23, 334.

Life insurance—Title to sue—Obligation to pay executor and co-existent right to pay others.—In an action by an executor claiming payment of the proceeds of a policy under the obligation contained therein to make payment of the sum due on death to the executors of the assured, the company having previously made payment to a blood relation under a clause in the policy providing that a receipt signed by a relation by blood should be an effectual discharge to the company, *held* that the insurance company, in making the payment, were entitled to do so under the second-recited clause, and that the executor was not entitled to recover. *Rodgers, &c. v Prudential Assurance Co., Ltd.*, 25, 259.

Life insurance—Title to sue—Right to discharge—Condition precedent—Premium receipt book withheld by third party.—An industrial insurance company *held* liable to pay to the assured the sum due under their policy notwithstanding the retention by a third party of the premium book, the production of which to the company had not been made a condition precedent of payment. *M'Nab v Pearl Life Assurance Co., Ltd.*, 29, 240.

Sickness insurance—National health—Person employed—Inmate of charitable institution receiving gratuities.—To an institution maintained partly by income from investments, partly by charitable donations, and the expenses of which were lessened by the employment in or about the house of some of the inmates, to whom small gratuities were given in respect of good behaviour, admission was obtainable only on the ground of destitution, and the shelter afforded in it was only temporary. *Held* that working inmates who received gratuities were not "persons employed" by the directors of the institution in the sense of the National Insurance Act, 1911, part I. *Edinburgh House of Refuge v Scottish Insurance Commissioners, &c.*, 30, 151.

Interdict. *See also ASSESSMENT I., CAUTIONRY, EXPENSES II., HUSBAND AND WIFE I., JURISDICTION, LEASE IV., VIII., NUISANCE, POLICE II., PROCESS I., VI., PROPERTY, ROAD II., TRADE NAME.*

Competency—Exaction of rates—Specification of objection to levy.—Where a ratepayer in burgh sued for interdict of the levying of a rate from him on the ground of *ultra vires*, *held* unnecessary that he should also crave a declarator, when the rate remained unpaid, and that he should specify

Interdict—continued.

the illegality, when he had stated the whole circumstances. *Lindsay v Provost, &c., of Coatbridge*, 30, 317.

Competency—Operations partly completed.—The pursuer sought interdict against the defenders building on a road belonging to him, and was granted interim interdict. The defenders had already erected a building on part of the area sought to be protected from encroachment. *Held* that interdict was not an appropriate remedy as regards this part, and interdict *recalled quoad* it. *M'Ilwrick v Waddell, &c.*, 26, 265.

Interest. See also BURGH, COMMON PROPERTY, LOAN.

Ground annual—Duplicand as distinct from termly payment—Lawful interest.—Where in the dispositive clause of a contract of ground annual one of the conditions was that the conveyance was under burden (1) of a ground annual, "with the lawful interest of each term's payment from the time or times that the same became due till payment," and (2) of the double of the yearly ground annual at the expiry of every nineteenth year; and where in a later part of the deed the donees bound themselves to pay the yearly ground annual and the duplication thereof every nineteenth year "with interest all as hereinbefore written," *held* that no interest was due on a duplicand, either *ex lege* or on a construction of the contract, whatever was the import of the expression "lawful interest." *Sinclair, &c. v Templeton*, 26, 270.

Bill unpaid—Collateral agreement—Penalty or damages.—A bill payable to a moneylender included interest at 28 *per centum*, principal and interest being accumulated at the expiry of a period for instalment payments fixed by a collateral agreement, which stipulated for 6d. per £1 per week interest thereafter on the total sum in the bill. *Held* that the latter interest was not liquidated damages but a penalty, and could be modified; and only 5 *per centum* interest allowed after default, when the debtor's obligation was being purged by a cash payment and not merely constituted by a decree. *Exchange Loan Co. v Irvine, &c.*, 30, 111.

Intoxicating Liquors.

Licence duty—Allocation between landlord and tenant—Finance (1909-10) Act, 1910, First Schedule, C, and scale 3—Finance Act, 1912, sec. 2.—A was the holder of a publican's licence for premises in Glasgow, the property of B, of which A was tenant from 1904 to 1914 at a yearly rent of £99. The annual value of the premises, if let unlicensed, was £35. Up to the commencement of the Finance (1909-10) Act, 1910, the licence duty payable by A was £25. By that Act his duty was increased to the half of £99. *Held* that A was entitled to recover from B $\frac{6}{9}$ ths of the increase of the licence duty, being the amount proportionate to the increase of rent from £35 to £99. *Robertson v Kennedy, &c.*, 29, 354.

Intoxicating Liquors—continued.

Licence duty—Allocation between landlord and tenant—Period for fixing increase of rent of licensed premises.—The pursuer, as tenant of licensed premises, sued the defenders, as grantors of the lease thereof to him, dated 12th February, 1908, claiming from them so much of the increased duty payable in respect of the licence under the provisions of the Finance (1909-10) Act, 1910, as was proportionate to the increased rent or premium payable in respect of the premises being let as licensed premises. *Held* that the *punctum temporis* for ascertainment of the increase of rent, or for comparison of rent of licensed with that of unlicensed premises, was not the date of the passing of the 1912 Finance Act establishing the claim, nor the date of the claim itself, nor the date when the duty was exigible, but the date when the contract of lease founded on was entered into. *Duffy v Harrison, &c., 30, 303.*

Intromitter. *See LEASE IV., VITIOUS INTROMITTER.*

I O U. *See also BANKRUPTCY II., LOAN.*

Loan or other contract—Proof.—The pursuer sued for two sums of £50 each, contained in two I O U's granted by the defender and held by the pursuer. He averred that the money was a loan by him to the defender. The defender denied the debt, and averred that the pursuer and he were engaged in exploiting an invention; that the two sums were payments made by the pursuer to him with the view of exploiting that invention; that the two I O U's were granted as an acknowledgment of the receipt of the money; and that it was understood that the payments were to be regarded as on account until the discovery was further exploited. *Held* (rev. Sheriff-Substitute) that the defender was entitled to a proof of his averments, restricted, as the contract was unusual, to evidence by the writ or oath of the pursuer. *Murdoch v Ross, 23, 275.*

Partner's holograph—Firm's liability—Joint and several indebtedness of two signatories.—In an action for payment of the contents, with interest, of three I O U's, written by a partner of a firm and signed by him as an individual and with the firm-name, *held* (1) that the I O U's were holograph of the firm, and that, the partner having authority to borrow, the firm and partner were liable to pay the debt; and (2) that any presumption of merely *pro rata* liability as between the two signatories was overcome by their relation *inter se*. *Young v Weir, &c., 26, 235.*

Joint Obligation. *See EXPENSES I., PROCESS VI., REPARATION II. (b), V., SLANDER.*

Joint and Several. *See DEBTS RECOVERY ACTS II., REPARATION II. (b), V., SLANDER, SMALL DEBT ACTS, TITLE TO SUE.*

Joint Stock Company. *See COMPANY.*

Judgments Extension. *See RES JUDICATA.*

Judicial Factor. *See also BANKRUPTCY I., IV. (c), JURISDICTION.*

Curator—Appointment—Averments of unsound mind.—Where next-of-kin, petitioning for the appointment of a *curator bonis* to an old lady, without averring instances of her inability to manage her own affairs, produced only certificates by two medical men that she was incapable “owing to marked impairment of memory,” further inquiry and petition itself *refused*, with expenses against the petitioners. *Key, &c. v Swan, &c.*, 30, 77.

Jurisdiction. *See also ARRESTMENT I., V., COMPANY, DEBTS RECOVERY ACT, HUSBAND AND WIFE I., II., PARENT AND CHILD, SHIP IV., V., TRADE UNION, WORKMEN'S COMPENSATION ACT V. (d), WRIT.*

Business in shire—Foreign company—Local office—Maritime contract—Locus solutionis.—A company, having its head office in Canada and an office in Lanarkshire, was sued in Lanarkshire for damages in respect of its failure to perform a contract of carriage of goods from inland places in Canada to Glasgow, contained in a bill of lading which stipulated for the termination of the company's liability at the port for shipment to Glasgow. The pursuer claimed jurisdiction on the grounds of (1) Lanarkshire office, (2) maritime contract, and (3) *locus solutionis*. Held that the first ground did not apply to foreigners, and that the second and third grounds were negatived by the terms of the bill of lading. *Johnstone v Donaldson Brothers, &c.*, 22, 113.

Business in county under different name—Citation.—The defenders, who carried on business in Glasgow, and had no business in Perth, took a lease of a shop in Perth, and opened it under the name of James Dewar & Co. The pursuers, who had bought the goodwill of James Dewar's business from his trustee in bankruptcy, applied for interdict, and averred that James Dewar, who managed for the defenders, was merely a servant in their employment. Held that the mere difference of name was not enough to make two distinct firms of the defenders; that it was unnecessary to cite them under the name in which they carried on business in Perthshire; and that there was jurisdiction. *Methven Simpson, Ltd. v Gray & Goskirk*, 22, 342.

Jurisdiction—continued.

Business in shire—Trading ceased.—*Opinion* that a warehouseman, who had ceased to buy or sell, had retained no stock, and merely collected his accounts at his office, did not carry on business at his former place of business within the sheriffdom, and that the Sheriff had not jurisdiction over him under sec. 6 (b) of the Sheriff Courts Act of 1907. *Dallas's, Ltd. v Hodge & Co.*, 26, 214.

Business in shire—Trustees carrying on business as individuals.—*Sheriff Courts Act, 1907, sec. 6 (b).*—Two out of three trustees, having each a place of business in Glasgow, and each carrying on business there, were personally cited within the jurisdiction. The third trustee, a domiciled Englishman, was cited edictally. The trust estate was for the most part within the sheriffdom of Lanarkshire. *Held* that the trustees were subject to the jurisdiction of the Sheriff of Lanarkshire, at Glasgow, in a summary cause for payment of a debt of the trust. *Aston & Co. v Barclay, &c.*, 29, 10.

Domicile—Cessation of residence.—*Held* that jurisdiction *ratione domicilii* does not continue for forty days after the defender has left the county to reside elsewhere *animo remanendi*, but ceases whenever the residence has ceased. The defender had lived seven years in the county as tenant of a house and shootings, but his tenancy ended on 28th May, 1904; he had by that date left Scotland to reside elsewhere; and the action was served (in the keyhole of the house) on 1st June, 1904; plea of no jurisdiction sustained. *Haining v Bell*, 21, 83.

Domicile—Cessation of residence.—Circumstances in which it was held that the Court had no jurisdiction, although the defender had heritable property within the jurisdiction, for repairs on which the account sued on was incurred, the defender having removed his residence to another county two days before the summons was served. *Callander v Pollock*, 22, 171.

Domicile—Cessation of residence—Sheriff Courts Act of 1907, sec. 6 (a).—*Held* that there was jurisdiction against a defender who had left one sheriffdom and removed to another sheriffdom; where the pursuers did not know his new address, and he was cited at his last-known address within forty days after his removal therefrom. *M'Lardy & Co. v Irvine*, 27, 94.

Domicile—Curatory—Residence of insane person—Judicial Factors Act, 1880.—Circumstances under which it was held (rev. Sheriff-Substitute) that the Sheriff Court of the county where an insane person last had his home, and not that of the county in which he happened to be detained, was the proper Court in which to apply for an appointment of a *curator bonis*. *Dougall, &c., Petitioners*, 22, 292.

Domicile—Foreigner—Several defenders in Lanarkshire and two in Ireland—Sheriff Courts Act, 1907, sec. 6 (a).—*Held* that, although an action was competent against three defenders

Jurisdiction—continued.

resident within the Sheriff's jurisdiction, sec. 6 (a) of the Sheriff Courts Act, 1907, did not create jurisdiction over two other defenders in Ireland not otherwise subject to the jurisdiction. Action accordingly dismissed *quoad* these defenders. *Neilson-Sproul, &c. v MacIntyre, &c.*, 26, 259.

Domicile—Foreigner—Heritable property in county—Action relating to it.—In an action for payment of the contents of bills of exchange, raised against one furth of Scotland and claiming jurisdiction because the defender had heritable property in Scotland, which he had conveyed by disposition to the pursuer (qualified by a back letter) as security for the debt in the bills, want of jurisdiction was pled. *Held* that the connection of the action with the property was not such that it related to the property or the defender's interest therein, in the sense of sec. 6 (d) of the Sheriff Courts Act, 1907, and as the Sheriff had no jurisdiction, action dismissed. *Gordon v Nicoll*, 29, 213.

Domicile—Foreigner—Englishman tenant of abandoned dwelling in sheriffdom—Cessio.—Plea of no jurisdiction sustained in the application for cessio of an Englishman by origin and present residence, who had recently been tenant, and whose wife was at the date of the application tenant, of a dwelling in the sheriffdom, as his domicile there had been lost by his removal, and would be restored only if he should again get work there and return to the jurisdiction. *Mitchell's Cessio*, 29, 289.

Procedure—Is citation by registered letter equivalent to personal citation?—*Held* (rev. Sheriff-Substitute) that a defender who would have been subject to the jurisdiction of the Sheriff of the Lothians if he had been personally cited within the sheriffdom was not so subject, having been cited only by registered letter within the sheriffdom. *Davidson v Gourlay*, 22, 242.

Procedure—Time for proof of facts founding jurisdiction.—Circumstances in which a motion that the jurisdiction should be settled *ante omnia refused*.—*Methven Simpson, Ltd. v Gray & Goskirk*, 22, 342.

Procedure—Lis alibi pendens—Sheriff—Application to Land Court.—Where landlords, seeking from a Sheriff warrant to eject from a dwelling and land one whom they described as an estate joiner, occupying it in virtue of his employment, from which he had been dismissed, were anticipated by the joiner's having applied to the Land Court as an existing yearly tenant, which he pled as a ground for sisting the ejection, *held* that the Sheriff must sist procedure till the Land Court should decide the joiner's *status* as an occupier of the holding. *MacLaine, &c. v MacFadyen*, 30, 176.

Quasi-contract in shire—Foreigner—Father of illegitimate child—Personal citation.—An English bookmaker, who in the course of his business attended race meetings in Scotland,

Jurisdiction—continued.

was sued in the Sheriff Court at Glasgow for the aliment and inlying charges of an illegitimate child begotten within the sheriffdom, and was personally served with the action while temporarily residing within the sheriffdom. *Held* that he was amenable to the jurisdiction of the Sheriff. *Carrigan v Phillips*, 21, 335.

Quasi-delict of defender's servant within shire.—When a motor car owner was sued and served personally in the county in which it was alleged his servant had run down the pursuer with the car, *held* that the defender was subject to the jurisdiction of the Court of that county. *Observations* on sec. 6 (i) of the Sheriff Courts (Scotland) Act, 1907. *Henderson v Muir*, 26, 158.

Quasi-delict in shire—Domicile in another county—Temporary fishing business—Herring Fishery Act, 1808, sec. 60.—*Held* that the owners and crew of a steam herring drifter, alleged to have by their fault collided in Zetland waters with a sailing fishing boat and caused damage to her, were not subject to the jurisdiction of the Sheriff of Zetland by reason of the Herring Fishery Act of 1808 or otherwise—the defenders having their domiciles in the county of Nairn, and having left Zetland more than forty days before action was raised; and action against them *dismissed*. *Macpherson, &c. v Ellen, &c.*, 30, 206.

Reconvention—Idem negotium—Damages arising in series of dealings.—Circumstances in which a foreign pursuer raising an action for debt in a Sheriff Court was *held* liable by reason of reconvention to an action of damages arising out of another transaction in the same course of dealing within a short interval of time. *Mechan & Sons, Ltd. v British Mannesmann Tube Co., Ltd.*, 21, 88.

Reconvention—Course of dealing—Liquid and illiquid.—*Held* (1) that a foreign pursuer raising an action for debt in the Sheriff Court is liable by reconvention to an action of damages arising out of another transaction in the same course of dealing within a short interval of time; and (2) that the question of whether the respective claims are liquid or not has no bearing on the application of the doctrine of reconvention. *Hannan, Watson, & Co. v Midgley & Sons*, 21, 90.

Subject in county—Interdict of foreigners' poinding—Preventive jurisdiction.—The pursuers sought interdict against an English firm to prevent a sale (under diligence in virtue of the Sheriff's warrant) of effects which the pursuers claimed to be theirs, and not the property of the firm's judgment debtors. *Held* that the Sheriff had jurisdiction without having recourse to the principle of reconvention. *Taylors v Hepper & Co.*, 21, 93.

Subject in county—Multiple poinding—Foreign defenders.—*Held* competent, in virtue of sec. 47 of the Sheriff Courts

Jurisdiction—continued.

Act of 1876, to convene as defenders in an action of multiple-poinding in the Sheriff Court parties furth of Scotland over whom the Sheriff would otherwise have had no ground of jurisdiction, the holder of the fund *in medio* being undoubtedly subject to the jurisdiction. *Nisbet v Sinclair*, 22, 177.

Subject in county—Interdict of sale under poinding.—*Held* that the Sheriff of a county in which effects had been pointed on a decree obtained in that county, at the instance of a person who had no domicile in it but resided in another sheriffdom, had jurisdiction to try an action of interdict of the sale under the poinding by the owners of the effects, *ratione rei sitae*. *Urquhart & Son v Wood*, 22, 255.

Subject in county—Several defenders—Trustees, one resident in county and one abroad—Sheriff Courts Act, 1907, sec. 6 (a).—*Held* that sec. 6 (a) of the Sheriff Courts Act of 1907 gave jurisdiction over the trustees in a marriage contract trust, where one only of the trustees was resident in Scotland and in the county and the other resident in England, but the administration of the trust was within the county. *Cathcart, &c. v Scott, &c.*, 25, 16.

Transfer to another sheriffdom—Forum non conveniens—Plurality of defenders in different sheriffdoms—Sheriff Courts Act, 1907, sec. 6 (a), and rule 19.—In an action against two defenders residing in different sheriffdoms, brought in the sheriffdom where the pursuers and one of the defenders were domiciled, plea by the other defender of *forum non conveniens sustained*, and cause transferred to sheriffdom of the latter's domicile. *Lamb & Co. v Pearson, &c.*, 28, 80.

Jury Trial. *See* PROCESS VII.

Jus Administrationis. *See* HUSBAND AND WIFE II.

Jus Mariti. *See* HUSBAND AND WIFE II.

Jus Quæsitum Tertio. *See* FRIENDLY SOCIETY.

Jus Relictæ. *See* HERITABLE OR MOVEABLE, HUSBAND AND WIFE III.

Jus Tertiæ. *See* LEASE.



Lair. *See HERITABLE OR MOVEABLE.*

Landlord and Tenant. *See LEASE; also BANKRUPTCY III., IV. (b), REPARATION II. (a), IV.*

Law Agent. *See also BANKRUPTCY IV. (b), (c), EXPENSES, PRESCRIPTION I., PROCESS I., VII., VIII., X., SMALL DEBT ACTS, TITLE TO SUE, WORKMEN'S COMPENSATION ACT V. (h).*

Account—Right of client to have account taxed—Waiver by formal discharge.—Held (rev. Sheriff-Substitute) that a client was entitled to have his law agent's account of expenses produced and taxed, notwithstanding that he had granted his agent a formal discharge of all his claims in connection with the litigation at his instance for which the account was incurred. *A v B, 24, 266.*

Conduct of litigation—Filiation and aliment—Sufficiency of proof.—Circumstances in which (rev. Sheriff-Substitute) the pursuer of an action for filiation of, and aliment for, an illegitimate child was held not to have proved her case. Observations by the Sheriff-Principal on an agent's duty in preparing for proof. *Hannigan v Beck, 23, 113.*

*Conduct of litigation—Filiation and aliment—Sufficiency of proof.—Observations on the duty of the reporters on *probabilis causa* in admitting a poor person to litigation *in forma pauperis*, and on that of her law agent in estimating the sufficiency of the evidence before raising action.* *Fowler v M'Pheat, 23, 144.*

Conduct of litigation—Negligence as bar to remuneration—Suing unincorporated club—Damages for charging individuals on decree against club.—Circumstances in which it was held no bar to a law agent's claim for his account for litigation that he had sued an unincorporated club without the addition of individual members, and no ground for damages against him that he had caused individual members to be charged on a decree against the club, whence arose suspensions and expense to the client. *M'Donald v M'Donald, 29, 157.*

Hypothec—Decree in agent's name—Arrestment in client's hands.—In an unsuccessful arbitration by a workman against his employers for workmen's compensation, in which they were awarded expenses, the employers' agent obtained an extract of the decree for the expenses in his own name as agent disburser. The workman again entered the employers' service, and the agent arrested the workman's wages under the decree. In a Small Debt action of forthcoming by the agent to have the arrested fund made available to him, held that extracting in the name of the agent disburser was merely "a judicial assignment of the decree,"

Law Agent—continued.

and that the arrestment was incompetent, as the agent could take no higher right than the employers, who could not have arrested in their own hands. *Brand & Co., &c. v Cummings*, 30, 26.

Remuneration and responsibility.—Circumstances under which a law agent was held entitled as a man of skill to fees for drawing the rules of an industrial society. *Galbraith v British General Society, Ltd.*, 21, 175.

Retention—Waiver—Caution for payment of business account.—Circumstances in which held that a law agents' business account had been paid by its being deducted, though un-taxed, in their cash account, which showed a balance due to their clients, but that their lien remained to cover the expenses of an action of accounting and delivery against them, and that the clients were entitled to delivery of titles on finding caution for these expenses. *Duffy's Trustees v A B & Co.*, 23, 94.

Lease. See also ASSESSMENT IV., BANKRUPTCY III., IV. (b), COMPENSATION, CONTRACT III., DEBTS RECOVERY ACT I., GAME, INTOXICATING LIQUORS, JURISDICTION, REPARATION II. (a), IV., RIGHT IN SECURITY, SMALL DEBT ACTS, SMALL LANDHOLDERS ACT, TITLE TO SUE.

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I. Constitution.

Consensus—Rei interventus—Evidence of agreement.—A tenant of a farm, in defence to an action of removing as at Whitsunday, 1908, pled a lease for nineteen years from Whitsunday, 1902, constituted by verbal negotiations with two out of three testamentary trustees, proprietors of the farm, followed by writings under the hand of one of these trustees. Held that, as the only writings produced did not import consent, there was no foundation for *rei interventus*, and, as the oath of the landlords was negative, the alleged lease was not proved, and removing granted. *Fell, &c. v Macintyre*, 25, 275.

Duration — No period stated — Rei interventus.—In an action for implement of a letter in the following terms:—"I hereby agree to let my premises, situated in C Street, as pointed out, at a rental of £120 per annum; the premises to be altered to your satisfaction, the cost not to exceed £3000; the tenant to pay 10 per cent. per annum on my outlay for proposed roller rink"; the pursuer averred that a term of ten years had been agreed on; that the letter had been handed to him along with the keys of the premises;

Lease: Constitution—continued.

that a draft lease had been prepared but never adjusted; and that he never had possession. *Held* that the term could have been proved *pro ut de jure* if there had been possession or *rei interventus* following upon the agreement, but that such *rei interventus* had not been relevantly averred, and action dismissed. *Boyd v Livingston*, 26, 108.

Implied tenancy—Occupation continued by widow of deceased owner.—The heiress of entail of a heritable estate sued the widow of the late heir for rent of the mansion from the date of the latter's husband's death on 1st February till her removal about Whitsunday, on the ground of a contract of tenancy implied by occupation. *Held* that the presumption of tenancy was displaced by evidence of negotiations for a lease, pending which the pursuer had not warned away the defender, and had apparently recognised the custom of allowing a deceased heir's widow to remain in occupation till the next term, or at least for a time. *Mackintosh v Keith*, 28, 3.

Missives and correspondence—Order for formal lease.—In an action to ordain the defender to execute a formal lease, following on missives and correspondence, order granted, reversing Sheriff-Substitute, who held the missives sufficient of themselves and the action unfounded. *Gordon v M'Vitae*, 27, 115.

Missives informal—Locus poenitentiae.—In an action for implement of letters alleged to establish a contract of lease as to ground and a store, or for damages in respect of non-implement, *held* that there was no contract to implement or to found a claim on breach, inasmuch as the letter of offer founded on was neither holograph nor tested, and an alleged amended offer (not produced) was admittedly not accepted. *Jones v Green*, 27, 256.

Tacit relocation—Grazing on golf links—Notice under Agricultural Holdings Acts.—*Held* that the Agricultural Holdings (Scotland) Act, 1883, does not apply to a yearly right of grazing sheep on links, the principal use of which is golfing, so as to oblige the landlords to give the grazier the six months' notice to remove appropriate under the Act to a holding of land let from year to year. *Provost, &c., of North Berwick v Wilson*, 23, 243.

Tacit relocation—Quarry as rubbish toom.—A landholder let to a town council for ten years part of a quarry and a piece of land adjoining it for depositing town refuse—the manurial rubbish on the land and the rest in the quarry—declaring that when the part of the quarry should be filled up the lease should *ipso facto* come to an end. At the end of the ten years the tenants ceased to make deposits, but without notice, afterwards saying the quarry was filled up; and they paid no more rent. In an action for rent, *held* that tacit relocation applied as in other leases of land, and that the tenants were liable to pay another year's

Lease: Constitution—continued.

rent, being all the landlord asked for. *Birrell v Provost &c., of Kirkcaldy*, 28, 155.

II. Possession, Use, and Warranty of Subjects.

Privity of contract—Widow of deceased tenant suing landlord for damages.—*Held* that the widow of a deceased tenant of a house, occupying it under his contract, had a title to sue an action of damages for wrongous sequestration of effects in the house, as she did not need to found on the contract. *Hunter v M'Dougall, &c.*, 25, 364.

Use of subjects—Landlord's obligation—Defective drains—Smoke test—Reparation.—Where a tenant, before taking a house, stipulated for a smoke test being applied and a sanitary certificate granted, which was done by a registered plumber, *held* that there was no relevant claim of damages in respect of illness caused by the defective state of the drains, though the tenant averred that the test had never been properly applied, and that the certificate was false, the landlady admitting that the tenant might be entitled to leave the house, but denying that any *culpa* was attributable to her. *Fischer v Mitchell*, 22, 3.

Use of subjects—Landlord's obligation—Overflow of water—Children's mischief after notice of risk.—A shop was flooded with water from an empty house above, after notice to a representative of the landlord of both premises that children had access to the water tap in the empty house, which notice was neglected. *Held* that the tenant of the shop had right to damages as against the landlord. *Rickards v Lothian*, in H.L., 11th February, 1913 (malicious act of third party), contrasted. *Beardmore, &c. v Mathew*, 29, 345.

Use of subjects—Landlord's obligation—Possession—Farm—Trespass—Interdict.—The tenant of a farm sought to interdict the gamekeeper, acting also as ground officer, of his landlord from “molesting him in his possession,” and particularly from unlawfully entering the farmyard and opening the doors of the farm offices, and looking into the offices. The defender had the instructions of the landlord's factor to do these things, and used as an approach an estate road which passed through the farmyard to the hills behind. *Interdict refused. Lauder v Scott*, 23, 137.

Use of subjects—Landlord's obligation—Possession—Farm—Flood—Express immunity of lessor.—In defence to an action for rent the tenant claimed a larger sum as damages by the flooding for a year or more of much low-lying pasture through the bursting of a river's banks on another estate, and by the consequent loss of possession. *Held* that the claim was irrelevant, and was also barred by a clause of the lease protecting the proprietor from damage “by flooding or overflowing of the water.” *Farish v Caskie*, 27, 173.

Use of subjects—Landlord's obligation—Farm—Game damage—Compensation—Agricultural Holdings Act, 1908—Arbitra-

Lease: Possession, Use, and Warranty of Subjects—continued.

tion—Agreement in lease.—Where in a lease dated before the Agricultural Holdings Act of 1908 it was agreed that the tenant of a farm should have a claim for damage by winged game only so far as the damage should exceed £20 a year, *held*, in an arbitration as to compensation for such damage after the Act, that the arbiter need not allow the whole £20 to be deducted from the tenant's claim, but might fix what he thought just. *Mackay v Wood's Trustees*, 27, 269.

Use of subjects—Landlord's obligation—Possession—Grazing park—Damages for injury to tenant's horse—Landlord's negligence.—The pursuer had right to graze a horse in a park belonging to a burgh, and the burgh allowed a fire-extinguishing display in the park without having told the person giving the display of the presence of the horse, and the horse was frightened and injured as a result of the display. *Held* that the burgh was liable in damages. *Caven v Provost, &c., of Dalbeattie, &c.*, 26, 15.

Use of subjects—Landlord's obligation—Warranty of subject—Defective wall—Injury to tenant's wife—Title to sue.—*Held* (following *Cameron v Young*, 27th February, 1908, S.C. (H.L.) 7) that the wife of a tenant of a house had no title to sue the landlords for damages for injuries sustained by her from alleged defect of the house. *Observations* on the husband's right to sue, and on a joint claim for the spouses. *M'Cord, &c. v Watson, &c.*, 26, 308.

Use of subjects—Landlord's obligation—Water supply—Retention of rent—Damages.—A house, stables, and ground in a country place were let for five years. The chief water supply was made very disagreeable by oxidation from the iron piping, which was itself in good condition, but in which the water was apt to lie too long. The tenant made complaints, and intimated claims, and efforts were made at a remedy. The tenant paid the rent regularly up to the last year, and negotiated for an extension of tenancy, but sought to retain the last year's rent and claim damages. *Held* that the tenant was not entitled to retain that rent or obtain damages. *Sutherland, &c. v Scott*, 26, 144.

Use of subjects—Tenant's obligation—Damages on breach—Pactional damages.—The lessees of a quarry granted to the landlord a personal obligation that within a certain time they would erect a granite crusher of a certain capacity and form a road and fence, and that on failure of all or any of these obligations they would jointly and severally pay to the pursuer in name of pactional damages £300. *Held* that the obligation fixed a sum of pactional damages, which was decreed for upon proof of failure to implement and in the absence of averment that it was exorbitant or unconscionable. *Threshie v Cairney, &c.*, 21, 69.

Use of subjects—Tenant's obligation—Non-occupation—Tenant's failure to turn off water, and after flooding to fire and air.

Lease: Possession, Use, and Warranty of Subjects—continued.

—Where the tenant of a self-contained villa vacated the house during frost in winter, without turning off the water or leaving any caretaker in the house, or any person to fire or air it, and during her absence several bursts in the water pipes within the house took place and caused damage to it, *held* that she was negligent in these omissions, and by not firing and airing the house after the flooding, was liable for the damage caused thereby. *Mickel v M'Coard*, 29, 3.

Use of subjects—Tenant's obligation—Prohibition of erections—Mutuality—Relevancy of averments of complainer's breach.

—Where the conditions on which a fruit farm was let for years included a prohibition of certain erections, *held*, in an action by the landlord to enforce the prohibition by warrant to remove erections and for interdict, that counter-averments of breach by the landlord of his obligations were not relevant in defence. *Burton v Gray, &c.*, 28, 212.

III. Repairs.

Breach of tenant's obligation—Damages.—In an action by a landlord against his tenant in an urban subject for damages in respect of failure to keep in repair as undertaken in the lease, *held* that the tenant was only liable by contract for decay which was due to want of ordinary repairs, and that the burden of proving that the defects complained of were due to other causes lay upon the tenant. Circumstances in which he failed to discharge the burden. *Earl v Black*, 22, 306.

Defective roof—Landlords' obligation to keep wind and water tight and to inspect.—A shop was let on lease, by which the landlords undertook to keep the premises wind and water tight. After a heavy rainfall in September, 1906, the premises were flooded, and the tenant's stock was damaged owing to the gutter in the roof, which had too little slope, and was not covered in, having become choked with rubbish. A previous flooding had taken place in 1903, and a claim then made against the landlords was paid. In an action of damages by the tenants for the loss sustained by them, *held* that the flooding was caused through faulty construction and want of inspection of the roof, and that the landlords were liable in damages. *Hampton v Gallo-way & Sykes*, 1 F. 501, distinguished. *Galbraith v Finlay's Trustees*, 24, 95.

Application for report and order.—Circumstances in which the tenant of a dwelling craved the Sheriff to remit to a man of skill to report on the alleged untenable state of the house (which she occupied), and to order the landlord or authorise herself to do as he reported should be done. Action *held* incompetent and irrelevant. *Observations* on the relative rights of landlord and tenant as to making alterations in the state of a house as let, and on the Sheriff's function of determining what should be carried out of matters reported on. *Maclagan v Marchbank*, 27, 282.

Lease—continued.

IV. Hypothec.

Competition—Arrestment—Sequestration in security—Effect on surplus after sequestration and sale for past due rent.

—Where a landlord had sold the whole of his tenant's effects under a sequestration for past due rent, and a surplus emerged, held that that surplus could be arrested in the officer's hands by an ordinary creditor of the tenant, and that such arrestment was preferable to a sequestration in security for next half-year's rent laid on before the sale under the first sequestration. *Aitken v M'Kay*, 22, 47.

Competition—Arrestment—Sequestration in bankruptcy.—In a multiplepoinding the trustee on the sequestrated estate of the common debtor was preferred to the fund *in medio*, being the price of trade stock sold by the bankrupt to a third party, in whose hands arrests had been used within sixty days before the sequestration, and the claim of the bankrupt's landlord, who had not used the diligence of sequestration for his rent, was repelled. *Hystop v Richmond, &c.*, 25, 200.

Competition—Arrestment.—Where auctioneers sold tenants' effects after sequestration by the landlord, having the tenants' instructions for the sale and the landlord's consent to it, held that the landlord's hypothec prevailed over an arrestment in the auctioneer's hands by creditors of the tenants. *Arthur & Hinshaw v Baird & Co., &c.*, 25, 254.

Discharge of hypothec by novation of debt for rent.—Circumstances in which landlords who took a bill at Martinmas for a balance of Whitsunday rent and for the Martinmas rent were held not to have waived their hypothec for the Martinmas rent. *M'Culloch's Trustees v Williamson Brothers*, 23, 124.

Intromitter—Auctioneer removing and selling.—Auctioneers, on a tenant's instructions, between terms rashly and without inquiry removed and sold a large part of the articles comprehended under the landlord's hypothec. Held that they rendered themselves liable for payment of rent secured by the hypothec. *Ross v Brady & Sons*, 30, 60.

Intromitter—Daughter of deceased tenant remaining in house.—Held that the only daughter of a deceased tenant, from whom was received the rent due on the day after the death, and who stayed on in the dwelling, was liable for the next term's rent as vicious intromitter with the subjects of hypothec, not being executor of the deceased; and decree granted against her, as well as warrant to sell the furniture. *Gatherar v Pettigrew*, 24, 113.

Intromitter—Hire-purchase—House Letting and Rating Act, 1911, sec. 10.—The whole furniture in a small dwelling-house, having been hired by the tenant under a hire-purchase agreement, held to be subject to the landlord's

Lease: Hypothec—continued.

hypothec. The owners of the said furniture, having removed it in respect of the tenant's failure to pay instalments due under the hire-purchase agreement, *found* liable in the current quarter's rent. *Held* that the 10th section of the House Letting and Rating (Scotland) Act, 1911, has no application to the case of a wrongous intromitter removing the hypothecated subjects from a small dwelling-house. *Duncanson, &c. v Woodhouse & Son*, 30, 273.

Intromitter—Poinding creditor—Extent of liability.—*Held* that a poinding creditor was liable for the landlord's rent only to the extent of the value of the goods sold by him, and that he was not entitled to deduct the expenses of sale from the amount realised, his obligation being in principle to restore the articles withdrawn from the hypothec. *Frame v Mills & Co., &c.*, 25, 236.

Intromitter—Poinding creditor.—In a Small Debt action for rent by a landlord against a tenant, and also against one of his creditors who had pointed and sold effects of the tenant, *held* (following *Wyllie v Fisher*, 1907, S.C. 686) that the creditor had a right to poind the hypothecated effects, but not a right to remove them, and decree granted against the intromitter as well as the tenant. *Skinner v Robertson, &c.*, 26, 44.

Intromitter—Poinding creditor—Extent of liability.—*Held* that a creditor of the tenants of an office, having pointed and sold the furniture subject to the landlord's hypothec, was liable to him in the whole unpaid rent of the year. *M'Naughton, &c. v Underwood*, 27, 74.

Intromitter—Poinding creditor—Extent of liability.—*Held* that creditors of an urban tenant, who had sold articles of his furniture under a decree in their favour, were liable to his landlord for the whole rent of which the articles formed part of the security by hypothec. *Mackersy v Edinburgh Loan and Deposit Co., Ltd.*, 29, 28.

Invecta et illata—Hired article not subject to hypothec—Notice of hire agreement sent to landlord—Piano.—A piano was hired out to a tenant under a hire-purchase agreement, and notice sent by the owners to the landlord stating that the property in the piano had not passed to the tenant, and that he was not to rely on it as forming part of his hypothec. After he received the notice the landlord took out a summons of sequestration for rent against his tenant, and sequestered and sold the piano. In an action by the owners against the landlord for its value, *held* that the piano was not subject to the landlord's hypothec—the owners having neither taken the risk of the hypothec nor allowed the tenant to take false credit for the piano as his own. *Marr Wood & Co., Ltd. v Wishart*, 21, 128.

Invecta et illata—Hired typewriter in dwelling-house.—Circumstances under which it was *held* that a hired

Lease: Hypothec—continued.

typewriter in a dwelling-house was not subject to the landlord's hypothec, and the landlord, who had sequestered and sold it, was *found* liable for the price to the owners. *Yost Typewriter Co., Ltd. v. MacSorley*, 21, 228.

Invicta et illata—*Sequestration*—*Informal appearance for third party followed by decree in absence*—*Res judicata*.—A third party appeared by a law agent (without formal minute of any kind) and claimed certain articles sequestered for rent under a Debts Recovery summons. The Court thereafter granted warrant to sell, without written opinion, in absence of the tenant. *Held*, in a subsequent action for delivery of the articles and damages, that the pursuer's claim was barred by his former appearance, and that, by the warrant to sell, the matter was *res judicata*. *Scott v Walton*, 22, 193.

Invicta et illata—*Hired electric motor*.—*Held* that the landlord's hypothec covered an electric motor and relative fittings which formed the only plenishing of a butcher's shop let to a tenant who had hired the motor. *Standard Electric Co., Ltd. v. Glasgow and District Heritable Investment Co., Ltd., &c.*, 22, 10.

Invicta et illata—*Hired or deposited typewriting machine—Trade tool*.—*Held* that a typewriting machine in the school of a teacher, first on hire and afterwards on deposit or loan, was subject to the hypothec of the landlords of the school. *Opinion* that it was not exempt from hypothec as being a tool of the teacher's trade. *Smith Premier Type-writer Co. v Cotton's Trustees*, 23, 38.

Invicta et illata—*Hire-purchase*—*Piano hired to husband of tenant*.—*Held* that, where a piano had been hired to a man as tenant of a dwelling-house, and it had been removed to another house of which the wife was the sole tenant, the piano was not subject to the hypothec of the landlord of the latter house, and warrant to carry back refused. *Kerr, &c. v Sim, &c.*, 24, 151.

Invicta et illata—*Single hired article removed before sequestration*.—Where a single article of plenishing has been hired out to the tenant of a house, but has been got back by the owner, and the hiring contract has come to an end before a sequestration for rent has been put in force, the article is not subject to the landlord's hypothec. *Armour, &c. v Maver & Son*, 24, 238.

Invicta et illata—*Hire-purchase*—*Piano hired to tenant but mainly paid for by daughter*.—*Held* that, where a piano had been hired to a tenant under a hire-purchase agreement, although the most of the instalments had been paid by a daughter of his, and she ultimately received a receipt in her own name for the price from the music-seller, without the consent of the tenant, the property in the piano remained with the tenant; and on the daughter removing it,

Lease: Hypothec—continued.

warrant to the landlord to carry back granted. *Dunn v Cumming, &c., 25*, 142.

Invecta et illata—*Hired furniture—Removal before sequestration*—*Warrant to carry back*.—Household plenishing, hired to the tenant of a house on a contract of hire-purchase, and removed by the owner in terms of the contract before being sequestered for rent, held subject to the landlord's hypothec, and warrant to carry back granted. *Owens v Henderson, 25*, 149.

Invecta et illata—*Hired typewriting machine—Tool of trade*.—Where a teacher of typewriting, who also executed typewritten work for gain, obtained two typewriting machines on hire-purchase, and when he died left them in the school which he tenanted, held that, as tools of trade, they were exempted from the landlord's hypothec. *Salter Typewriter Co. v Lightbody, &c., 25*, 197.

Invecta et illata—*Hired article—Duration of hypothec*.—When a house was let from month to month, an article hired to the tenant held subject to hypothec only for the rent of the months during which it was in the house, and not for the rent of previous months. *Ingram, &c. v Singer Sewing Machine Co., Ltd., 26*, 156.

Invecta et illata—*Hired sewing machine lent by hirer to tenant without consent of owners*.—Held that a sewing machine, hired to A and lent by her to B without the owners' consent, did not fall under the hypothec of B's landlords, who, having sold it after notice of the true ownership, were liable in damages. *Singer Sewing Machine Co., Ltd. v Hunter, &c., 26*, 170.

Invecta et illata—*Hired articles possessed by tenant's son*.—Held that landlord's hypothec did not cover a piano and piano stool in a restaurant when these articles were on hire to the tenant's son. *Watson v Dobbie, &c., 26*, 317.

Invecta et illata—*Hired furniture—Notice of hire agreement sent to landlord*.—Held that the presumption that *invecta et illata* are subject to the hypothec of the landlord of a dwelling-house did not apply where the whole furniture had been supplied on the hire-purchase system, and the lessors had formally intimated to the landlord that it was theirs, and that his hypothec was not to affect it. *Orr v Jay & Co., 27*, 158.

Invecta et illata—*Hired sewing machines held by wife of tenant*.—Held, where three sewing machines had been hired to the wife of the tenant of a dwelling-house, for use in her business as a dressmaker, and had been included in a sequestration for the rent of the house, that the right to possess the machines was in the wife, and that they were not subject to the hypothec of the landlord, and order made upon the latter to deliver up the machines to the owners. *Singer Sewing Machine Co., Ltd. v Dickson, &c., 28*, 195.

Lease: Hypothec—*continued.*

Invicta et illata—*Furniture lent to tenant.*—*Held* that, when articles lent to a tenant constituted the principal and only valuable part of the furnishing of the house, they were subject to the landlord's hypothec. *Ross v Irwin*, 28, 347.

Invicta et illata—*Sequestration*—*Exclusion of third party's article*—*Letter of protest.*—*Held* that the owner of an article sequestered for rent, who, in knowledge of its being included in the sequestration schedule, took no means to have it excluded, either by compearing, suing for interdict, or otherwise, but merely wrote a letter claiming it as his and threatening an action for damages, was barred from claiming damages from the landlord, who had sold it. *Whyte v Goodall & White, Ltd.*, 30, 50.

Sequestration—*Removal currente termino*—*Wrongous sequestration*—*Intimation of sequestration in security.*—Three weeks before the term, a tenant having without leave removed part of her furniture and having refused to pay or consign the rent, the landlord sequestered in security. Six days after the term she paid the rent and the expenses of the sequestration. *Held* (rev. Sheriff-Substitute) that the landlord was not liable in damages for wrongous sequestration, and that as there was no craving for warrant to carry back he did not need to give intimation of the application for warrant to sequestrate. *Observations on sequestration for rent. Paul v Smith*, 25, 223.

Sequestration in security—*Rent duly paid*—*Warrant to carry back.*—*Held* that furniture removed upon 23rd May from a house, the rent of which had been paid upon the 15th, was not subject to the landlord's hypothec in security for the following half-year's rent, as it had not been in the house during the period of possession for which that rent was due, and therefore that he was not entitled to a warrant to carry back. *M'Queen v Armstrong*, 24, 377.

Sequestration in security—*Expenses*—*Rent paid.*—Circumstances in which a landlord was *held* entitled to the expenses of an action of sequestration raised by him against his tenant for current rent, notwithstanding the fact that the rent was paid at the term when it became due. *Scott v Mansergh*, 21, 283.

Sequestration in security—*Expenses*—*Rent paid.*—Circumstances in which, although the rent was paid when due, the landlord was found entitled to the expenses of a sequestration in security. *Primrose's Trustees v Cocker, &c.*, 22, 111.

Sequestration in security—*Expenses*—*Rent consigned.*—Circumstances where it was *held* that sequestration in security was justified, and that the landlord was entitled to the expenses thereof from the tenant, although the rent was consigned in Court before its due date. *M'Gregor v Scott*, 22, 270.

Lease: Hypothec—continued.

Surrogatum—Subjects destroyed by fire.—*Held* that a landlord had not in respect of his hypothec a preferable claim over a sum of money due by an assurance company to his tenant for loss by fire of subjects in the shop occupied by the tenant. *Guardian Assurance Co., Ltd. v Craig, &c.*, 25, 64.

Surrogatum—Balance of proceeds of sale under Small Debt sequestration—Competition with arrestment.—A landlord took out a Small Debt decree of sequestration and sold his tenant's piano thereunder for rent due. A surplus was consigned with the Sheriff-clerk as the tenant's money, in conformity with sec. 20 of the Small Debt Act, 1837. An ordinary creditor of the tenant arrested in the Sheriff-clerk's hands, and, having obtained a decree of forthcoming, uplifted the surplus. The landlord sued him for payment of it on the ground that it was a *surrogatum* for the piano hypothecated for the subsequent quarter's rent. *Held* that the landlord had lost his right of hypothec when the piano was sold, and that the surplus was arrestable by ordinary creditors. *Gatherar v Muirhead & Turnbull, 25, 357.*

V. Rent.

Prepayment—Presumption of collusion.—Circumstances in which *held* that the presumption of bad faith on the part of a tenant when he pays his rent before it is due was rebutted, and tenants were *assailed* in an action of forthcoming by a creditor of their landlady, who had used arrestments in their hands and sought to make them liable in second payment of their rents. *M'Haffie v Irvine, &c., 21, 172.*

Prepayment of rent in bona fide—Arrestment.—Circumstances under which an arrestment in the hands of a tenant by his landlord's creditor, subsequent to a prepayment of rent by the tenant, but prior to the term, attached nothing, and the tenant was *held* not liable for second payment in an action of forthcoming following on the arrestment. *Lindsay v Rodger & Co., &c., 21, 252.*

Retention—Liquid and illiquid—Damage by overstock of game and rabbits.—Where a farm tenant, sued for payment of his rent, pled a right to retain it in respect of a counter claim for damage to his crops through the depredations of his landlord's excessive stock of game and rabbits, and produced an assessment of the alleged damages by the valuers of his way-going crop (to the valuation of which the landlord was no party), *held* that the claim was an illiquid claim for damages, and did not form a relevant answer to a demand for rent. *Macleod v Munro, 21, 35.*

Retention—Liquid and illiquid—Non-performance of landlord's obligations.—Circumstances in which the Court *repelled* a tenant's claim to retain rent against his landlord in respect of the non-performance by the latter of his obliga-

Lease: Rent—continued.

tion in the lease to erect buildings for the tenant's use—the latter having paid his rent from time to time without reservation. *Rae v Hamilton*, 25, 327.

Retention—Mutual obligations—Order to consign.—Where a landlord suing for rent was met with a defence that he had not provided an implement house as stipulated, *held* that the defence must be remitted to proof, but only after consignation of or caution for the rent claimed. *Observations* on the mutual contract of lease, liquid and illiquid obligations, and the precaution of ordering security. *Robertson v Nimmo*, 27, 367.

VI. Settlement at Ish.

Agricultural Holdings Acts—Arbitration—Sheriff.—Circumstances in which *held* that there was no relevant averment of "misconduct" on the part of an arbiter in a reference under the Act of 1908 for compensation in respect of improvements. *Arbuthnott v Williamson, &c.*, 25, 255.

Agricultural Holdings Acts—Arbitration—Valuation of consent.—Where, before *Stewart v Williamson*, 13th July, 1910, S.C. 1254, the outgoing and incoming tenants of a farm had allowed a reference under the lease as to manure taken over to go on before two arbiters and an oversman till their award was brought before the Court for enforcement, *held* that it was too late to apply by nullifying the proceedings the enactment that all such matters must be determined by a single arbiter. *Opinion* that the enactment applied to references between tenants. *French v Durham*, 27, 77.

Agricultural Holdings Acts—Arbitration—Valuation of sheep stock—Order on arbiter to state case.—*Held* that the construction of a clause in a lease of a sheep farm as to the basis of valuation to be adopted by the arbiter at the tenant's outgoing was a question of law, and the arbiter *directed* to state a case for the opinion of the Sheriff under the Act of 1908, schedule 2, rule 9. *Williamson v Stewart*, 27, 240.

Agricultural Holdings Acts—Compensation for improvements—Period for claiming.—Where a farm tenant's ish from the houses, &c., was at Whitsunday, 1906, and from the land under grain crop at the separation of the crop from the ground, or Martinmas, 1906, *held* that a claim for compensation for improvements made in August, 1907, was too late, in respect of sec. 2 (2) of the Agricultural Holdings Act, 1900. *Troup v Kilgour*, 24, 84.

Agricultural Holdings Acts—Compensation for improvements—Retention of rent pending arbitration.—Where a landlord admitted that compensation was due to his tenant for improvements and the tenant admitted that rent was due to his landlord, *held* that the rent was retain-

Lease: Settlement at Ish—continued.

able till the amount of the claims should be ascertained by an arbiter agreed on. *Rutherford v Brown*, 29, 303.

Awaygoing crop—Grass of second and third years—Express provisions in lease.—Where under a farm lease the tenant entered at Whitsunday, 1887, paid his first rent at Candlemas and Lammas, 1889, for crop and year 1888, and express stipulations were made for the incoming tenant taking over the land for green crop, the manure, the first year's grass, and the grain crop of the awaygoing year, but nothing was mentioned about grass which should be of the second or third year's growth in that year, or about rent of green-crop land, *held*, in an action for the ascertained value of the last-mentioned grass and rent, that the tenant had no right under the lease or common law thereto. *Troup v Kilgour*, 24, 84.

Awaygoing crop—Compensation—“Same conditions.”—In a farm lease the tenant, *inter alia*, in respect of early entry agreed to pay £7, and at his iish he was to leave the subjects on “the same conditions,” *held*, on a construction of the lease and in view of his not giving early entry to his successor, that the condition of paying £7 was not included among the same conditions. *Rutherford v Brown*, 29, 303.

Awaygoing crop—Valuation—Jus tertii.—In an action for payment of sums due under an award in an arbitration between an outgoing farm tenant, the pursuer, and an ingoing tenant, the defender, the defender pleaded that the pursuer had had more ground under white crop than he ought to have had in terms of his lease, and that in valuing such excess of crop the arbiters had gone beyond the terms of any reference to them. *Held* that the question of over-cropping with white crop was one wholly between the landlord and the pursuer, and that the defence was irrelevant, the parties having referred “the whole of the last year's grain crop” to arbitration. *Scott v Hendrie*, 21, 86.

Fixture—Greenhouse pertaining to dwelling.—Circumstances in which *held* that a greenhouse erected by a tenant of a dwelling-house, and taken over by subsequent tenants for the purposes of their own individual pleasure and recreation, and not for the benefit of the subjects of lease or for any purpose for which the subjects were let, remained the property of the last tenant, and was removable by him during the tenancy. *Malcolm v High*, 25, 264.

VII. Ejection.

Caution for violent profits.—The pursuer of an action for ejection of tenants from a house in burgh produced (1) an extract service by him to his deceased father; (2) notices to the tenants to quit the subjects, marked by the post officials as refused; and (3) a copy of the feu charter in his

Lease : Ejection—continued.

father's favour, the principal of which he alleged to be in the defenders' keeping or under their control. The defence, a general denial and an illiquid counter claim of debt against the pursuer for repairs, held insufficient to obviate the usual order to find caution for violent profits. *Macdonald v Macdonald, &c., 21, 5.*

Notice to remove — Disconformity with lease — Dates of ish — Description of subjects.—Circumstances in which notices to remove, served on an agricultural tenant, were held not to be in terms of the lease either as to the dates of ish or as to the description of the subjects, and not to conform to sec. 36 of the Sheriff Courts Act, 1907, and a summary warrant of ejection refused. *Cameron v Ferrier, 28, 220.*

Squatter—Title to sue of one neither owner nor tenant.—The owner of a West Highland island allowed the erection of a house on it, without feu or leasehold right being granted. A man who alleged he had built the house, but stated no title to it, sought warrant of ejection against a woman who had occupied it for five years or more. Held that the pursuer had no title to sue—the landowner, who was not a party to the action, having the only title to the house, and the pursuer being at best only a squatter, like the defender, as there was no implication of a tenancy in the circumstances. *M'Kinnon v M'Donald, 29, 167.*

Summary ejection — Conventional irritancy — Caution for violent profits.—A landlord sued for summary ejection against a tenant during the currency of his lease for a conventional irritancy thereof by bankruptcy. Held that the provision in the Act of Sederunt, 1839, sec. 34, for the defenders finding caution for violent profits in removing and summary ejections applied. Opinions as to the competency of summary ejection in the circumstances. *Burton v Mechie, &c., 21, 63.*

Summary ejection — Notice to terminate tenancy — Written notice — Sheriff Courts Acts of 1907 and 1913, sec. 37.—In an action for warrant summarily to eject one remaining in the pursuer's subjects as lately a tenant for a year or more, held that the application was irrelevant, in respect that it was not averred that written notice for termination of his tenancy was given on either side; and action dismissed. *Taylor v Brown, 30, 215.*

VIII. Removing.

Caution for violent profits — Sheriff Courts Act, 1907, sec. 52 and schedule 2.—Held (following *Inglis's Trustees v Macpherson, 1910 S.C. 46*) that a tenant was not bound to find caution for violent profits when tendering a defence in an ordinary removing. *Henderson v Nelson, 29, 233.*

Decree of removing — Ejectment on charge invalidly executed — Interdict of attempt to regain possession.—The officer's

Lease: Removing—continued.

execution of a charge to a tenant to remove did not specify the mode in which the charge was given. The tenant attempted to regain possession, and pled the defect in the execution in answer to an action to interdict her attempt. *Held* that the execution of charge was bad; but that, as the defender admitted she was in fact dispossessed, and the decree of removal stood intact, the pursuer was entitled to the interdict craved, without relying on a new and correct execution of charge produced in the interdict case after the Sheriff-Substitute had pronounced judgment. *Anderton v Law.* 27, 87.

Notice — Service on heir-at-law of deceased tenant.—Circumstances in which notice of removal held to have been properly served on the heir-at-law of a tenant, notwithstanding a general bequest of his whole estate by the tenant to his widow. *Earl of Mansfield v Ferguson,* 22, 362.

Notice — Dwelling-house — House Letting Act, 1911, sec. 4 —Six months' tenancy.—*Held* that the Act does not exclude parties from the letting of houses for six months, with monthly payments of rent, and with the notice of removal applicable under the Act to a six months' tenancy. *Thomson, Craik, & Co., Ltd. v Ritchie,* 30, 250.

Summary removing — Notice omitting date — Sheriff Courts Act, sec. 37 and Form J.—Where the tenant from year to year of a shop had been duly warned to remove at "Whitsunday, 1910," held that the omission of the words "being the 28th day of May," required by Form J, but not by sec. 37, of the Sheriff Courts Act, 1907, did not invalidate the notice, in view of the specification of the removal day by the Removal Terms Act of 1886, sec. 4. *Observed* that the "summary removing" of the section is rather a summary ejection created by the statute. *Watson. &c. v O'Neill,* 28, 96.

Legitim. *See* MULTIPLEPOINDING, PROCESS VI., SUCCESSION.

Lien. *See* DEPOSIT, RETENTION, SALE II. (a).

Liferent. *See* FEE AND LIFERENT.

Lighting. *See* PUBLIC HEALTH.

Limitation. *See* CAUTIONRY, PRESCRIPTION.

Lis Alibi Pendens. *See* SMALL DEBT ACTS.

Loan. *See also* HERITABLE OR MOVEABLE, INTEREST, I O U, LEASE IV., MASTER AND SERVANT II., PLEDGE, PRESCRIPTION II., RETENTION, RIGHT IN SECURITY, SHIP II., WRIT.

Commodate—Borrowed coach—Use outwith purpose of loan—Injury—Damages.—Where a coach was lent for a specific purpose on a certain day, and was damaged while being used

Loan—continued.

outwith that purpose by the borrower, *held* that the borrower was liable to make good the damage, although the loss arose from mere accident and not from fault or negligence on her part. *M'Lean v Beaton*, 28, 85.

Fraud—Incidence of loss.—Where a man's wife paid from his money the premiums on his life insurance, and, through her access to the policy, obtained a loan from the insurance office on the security of the policy by means of his forged signature, *held* that the rule did not apply that where one or other of two innocent persons must suffer through the fraud of a third person, that one of them who has enabled the third person to commit the fraud must suffer, because the husband never intended his wife to deal with the policy. *Millar v Prudential Assurance Co., Ltd.*, 29, 163.

Proof by writ—Entries in borrowers' books.—*Held* that a loan of money, for which no acknowledgment was taken, was proved by entries in the borrowers' books, and that these were binding upon their trustee in bankruptcy. *Dredge & M'Combie v Forrest*, 23, 4.

Proof—Writ of deceased debtor—Parole to identify debt.—Circumstances in which *held* that parole proof was admissible to identify the loan to a deceased debtor, the resting-owing of which was then established by his writ. *M'Kay's Trustees v Borthwick*, 28, 159.

Proof—Promissory note presented—Parole and written adminicles—Receipt by bank in claimant's hands—Mandate.—B, claiming under a trust deed by S, and in a suit against the trustee of S, said he lent his brother-in-law S £170, and produced (1) a promissory note by S to him for £170 "to square bank security," but long prescribed; (2) a receipt by a bank for £150 to credit of S per B, six days later in date; and (3) a letter of another branch of the bank, one day yet later, acknowledging £150 remitted to account of S. *Held* that none of these documents, nor all of them together, could be admitted as writ of S to prove a loan to S, or to admit parole evidence in supplement; but that, as holder of the receipt, and in the circumstances, B should be allowed proof before answer that he paid £150 on behalf of S and took the receipt to himself, as suggested by the writings. *Brand v Allan*, 29, 76.

Proof—Writ—Current account by receiver—Letter of receiver's agent.—In an action for repayment of money lent, an account holograph of the defender was produced showing receipt by him of the sum averred, but not as lent, and showing also its disposal in a mode said to be agreed to by the pursuer; and a letter by the defender's law agents mentioning "a sum of £50 lent to" him by the pursuer was also produced. *Held* that the account was not writ proving a loan, though it inferred an obligation to account, and that the letter was not writ of the defender or closely enough related to the matter to be writ of his agent; and

Loan—continued.

proof limited to oath of the defender. *Smith v Buie*, 29, 222.

Repetition of money advanced under illegal contract—Moneylenders Act, 1900—Res judicata—Title to sue.—*Held* that money advanced in loan, but not recoverable under the Moneylenders Act of 1900 owing to the lender not being registered, was recoverable in an action at the lender's instance at common law; and a decision pronounced under the Act assailing the borrowers from a claim by the individual lender's firm founded on bills and agreements held not *res judicata* in an action at the individual lender's sole instance. *Robertson v M'Gregor, &c.*, 22, 75.

Usurious interest before Moneylenders Act, 1900—Sheriff.—*Opinion* that the Sheriff cannot modify the interest freely stipulated on a moneylender's loan granted before the Moneylenders Act of 1900 came into operation. *Robertson v Levenson, &c.*, 21, 221.

Usurious contract—Excessive interest—Reopening—Harsh and unconscionable transaction—Moneylenders Act, 1900 (63 & 64 Vict. cap. 51), sec. 1.—*Held* that a transaction by which £20 was advanced on an obligation to repay £30 by £5 monthly instalments, to begin one month after the advance, was such that the Court could reopen it; and circumstances in which *held* that 20 per cent. was interest appropriate to the risk in place of the excessive rate stipulated. *Stanford & Co. v Geddes*, 21, 279.

Usurious loan—Unregistered moneylender.—*Held* that a moneylender, who had drawn certain bills for money alleged to have been lent thereunder, but was not registered as such at the time the bills were drawn, had no title to sue on them, and that the bills were null and void. *Exchange Loan Co., &c. v MacGregor & Campbell*, 21, 285.

Usurious interest—Moneylenders Act, 1900.—Circumstances in which *held* that 3d. per £ a week, or 65 per cent. per annum, was not exorbitant interest when charged by a moneylender for a loan granted simply on the bill of four persons. *Exchange Loan Co., &c. v Levenson, &c.*, 21, 337.

Usurious loan—Moneylenders Act, 1900, sec. 2 (1) (c)—Agreement in security—I O U.—I O U's to a registered moneylender are not such agreements or securities as are struck at by the Moneylenders Act. *Exchange Loan Co., &c. v Taylor*, 22, 138.

Usurious loan—Moneylenders Act, 1900, sec. 2 (1)—Alteration of bill and agreement after delivery.—*Held* that the addition in a bill, after its issue, of a moneylender's personal name to his trade name, subscribed as drawer, did not invalidate the bill, and that the addition of his address in a relative agreement did not invalidate it. *Exchange Loan Co., &c. v Taylor*, 22, 138.

Loan—*continued.*

Usurious loan—Interest—Exorbitant rate.—*Held* that 65 per cent. per annum was not excessive when stipulated for a loan on the bill of a person giving no security. *Exchange Loan Co., &c. v Taylor*, 22, 138.

Usurious loan—Moneylenders Act, 1900, sec. 2 (1) (c)—Bill not in moneylender's registered name.—*Held* that, though the deletion from a bill, after issue, of the word "limited," originally forming part of the drawer's (a moneylender's) subscription, was not an objectionable alteration under the Bills of Exchange Act, 1882, the bill was invalidated by sec. 2 (1) (c) of the Moneylenders Act, 1900, having been taken in a name other than the moneylender's registered name, which did not include the word "limited." *Exchange Loan Co., &c. v Taylor*, 22, 138.

Usurious contract—Moneylenders Act, 1900.—Circumstances in which the Court refused to reopen a loan by a moneylender on bill, in which the interest, if duly paid, would have been about 22 per cent., and the interest and fine for breach of the loan agreement was about 130 per cent.—the borrowers being persons of no known means, and having given no security. *Exchange Loan Co., &c. v M'Aweeny, &c.*, 24, 217.

Usurious contract—Moneylender—Interest or penalty on default.—Where a loan contract gave a moneylender 28 *per centum* on the sum lent on bill for a stipulated period, and a further high rate of interest after default, *held* that the debtor was entitled to purge his liability by a cash payment of the unpaid balance of the bill together with arrears of interest at 5 per cent. per annum. *Exchange Loan Co. v Irvine, &c.*, 30, 111.

Local Government. *See also ASSESSMENT, BURGH, EXPENSES, LUNATIC, POLICE, POOR, PUBLIC HEALTH, PUBLIC RECORDS, REPARATION II. (a), III. (b), IV., V., ROAD, TITLE TO SUE.*

Parish council—Power to acquire and lay out ground for public recreation—Local Government (Scotland) Act, 1894, sec. 24. The superior of a village gratuitously disposed the square or market-place to the parish council, to hold solely for the purposes set forth in sec. 24 of the Local Government (Scotland) Act, 1894, and subject to his veto upon certain operations. *Held* that such a limited gift was competently taken by the parish council, and that, within the powers conferred by the gift and the Act, was that of laying out and improving the ground with trees, roads, and seats. *Scotts v Cargill Parish Council*, 23, 59.

Locomotive. *See ROAD II.*

Lunatic. *See also JUDICIAL FACTOR, JURISDICTION.*

Aliment by lunacy board—Poor—Settlement—Destitution supervening in asylum—Lunatics Act, 1857, secs. 77 and 75.—A

Lunatic—continued.

private patient in a district lunacy asylum ceased to be such by his own destitution and his parents' want of means, but continued to be maintained in the asylum by the lunacy board which owned it, until liability for his maintenance was admitted by a certain parish. The board claimed the cost of this interim maintenance from the parish making the admission and from the parish of the lunatic's poor law settlement. *Held* that, under the Lunatics Act of 1857, sec. 77, the latter parish was liable, irrespective of notice under the Poor Law Acts. *Lanark District Lunacy Board v New Monkland Parish Council and Shotts Parish Council*, 29, 102.

Maills and Duties. *See EXPENSES I., PUBLIC HEALTH, RIGHT IN SECURITY.*

Mandate. *See ACCOUNTING, AGENCY, BANKRUPTCY IV. (b), CARRIAGE II. (b), (d), CONTRACT III., EVIDENCE, LOAN, MASTER AND SERVANT I., PARTNERSHIP.*

Mandatory. *See PROCESS IV.*

Manse. *See CHURCH.*

March. *See PROPERTY.*

Marriage. *See HUSBAND AND WIFE; also ALIMENT, BANKRUPTCY I., II., V., HERITABLE OR MOVEABLE, PARENT AND CHILD, PROCESS VII., SMALL DEBT ACTS, TITLE TO SUE.*

Master and Servant. *See also ACCOUNTING, ARRESTMENT IV., V., BANKRUPTCY III., CONTRACT II., DEBTS RECOVERY ACT I., HIRING I., III., PRESCRIPTION I., REPARATION III., SHIP V., WORKMEN'S COMPENSATION ACT.*

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I. Constitution of Contract.

Apprentice — Option in indenture to re-engage — Evidence of re-engagement for more than a year. — An employee who was bound apprentice to a firm of manufacturers, remained and completed the term of his apprenticeship with their successors in the business. The contract gave the employers an option, at the termination of the apprenticeship, of re-engaging the employee for a further period of three years at an increased wage. He remained with them thereafter at the increased wage, but left them after some weeks. *Held* that the re-engagement, being for more than one year, could only be proved by writing, and that it had not been proved by the contract or otherwise. *Hogg v Paton & Co.*, 21, 110.

Apprentice — Rei interventus. — *Held* that a contract of apprenticeship was not constituted by an informal writing followed by *rei interventus*, when the apprentice's father had, but he himself had not, signed the writing. *Observed* that an apprentice who is legally bound as such must continue at work notwithstanding a strike of other workmen. *Bayne & Duckett v Martin*, 28, 232.

Engagement of servant by manager beyond his powers — Holding out — Master's liability for reparation. — *Held* that a manager, with limited powers of engaging servants, who acted beyond the scope of his powers

Master and Servant: Constitution of Contract—continued.

in engaging a servant, rendered his master liable for a breach of engagement to the servant so engaged, who was ignorant of his powers, and was entitled, and induced by him, to rely on their being wide enough to cover the engagement. *Kerry v Garth & Co.*, 21, 106.

II. Remuneration.

Deductions—Notice—Truck Act, 1896, sec. 2 (1) (a) and (2) (a).—*Held* that cards which were given out to workers along with the work to be done, and which showed that deductions would be made, did not, in the absence of a signed contract and of notice posted up, comply with the requirements of sec. 2 (1) (a), and contravention *found proved*. *Vines v Goldie & Co., Ltd.*, 27, 109.

Extra work.—When a schoolmistress, during school hours, overtook the work of another teacher who was absent, which was of the same kind as her own work, *held* that there was no implication that she was to be paid extra for it. *M'Clure v Macdonald*, 24, 134.

Retention of wages—Loan—Truck Acts.—*Held* (following *Williams*, 43 S.L.R. 881) that, as under the Truck Acts wages earned or payable to an artificer must be paid in current coin, a master was not entitled to set off against wages money which he had previously lent the servant. *Morgan v Boyd*, 23, 146.

Retention of wages—Fine—Truck Acts.—Where an apprentice was fined “for imposition,” without specification of his offence, retention of the fine from his wages was *disallowed* as in contravention of the Truck Act of 1896, sec. 1 (2). *White v Henderson & Co., Ltd.*, 29, 152.

Share of profits—Truck Acts.—Where a workman's employers agreed that if he did certain work in less than the estimated time he should receive as bonus half the profits accruing to them on account of the time saved, *held* that he was not entitled to the bonus, in respect the work was not properly done, and that the Truck Acts did not apply to his being deprived of such a bonus. *Docherty v Harvey, Ltd.*, 30, 53.

Wages during sickness—National Insurance Act, 1911.—Circumstances in which it was *held* proved that a farmer had adopted the full contributing scheme of the Act before it commenced, having entered into an agreement to that effect with the pursuer, a ploughman in his service, and thereby ended the former custom of continuing to pay his men for the first six weeks of their sickness; and that the pursuer, claiming under the custom, was barred by knowledge of the adoption. *Cowan v Buchan*, 30, 57.

III. Termination of Service.

Death of master—Farm servant—Wages.—*Held* that a farm servant, whose master died in April, and who con-

Master and Servant: Termination of Service—continued.

tinued in the work till Whitsunday, when he left it, was entitled to full wages to that term, although his year of contracted service did not end till Martinmas—the death of the master having caused the contract to end. A claim for deduction on the wages, on the ground that the contract subsisted till Martinmas, and that the unfulfilled half-year's service was more valuable than that fulfilled, repelled. *White v Bullion's Representatives*, 24, 330.

Dismissal—Refusal of farm servant to do Sunday harvesting work—Attempt to influence fellow-servants to refuse.—Held that a farmer, whose grain crop, owing to bad weather, was mostly standing in the fields at the end of October, and who offered his servants reasonable extra remuneration for engaging in "leading" on Sunday, was justified in dismissing one of them who not only refused to accept the terms offered, but tried to dissuade his fellow-servants from doing so. *Wyllie v Findlay*, 24, 76.

Dismissal—Justification—Disobedience—Order not to attend a particular hiring fair at a special threshing time.—A farm servant, on a Monday night, asked his master for leave to attend a hiring fair at a distance. He was refused leave unless on condition of the failure of a threshing machine to arrive in time for threshing operations on the following day. The mill arrived the same night, and was obvious, but the servant went to the fair, and was afterwards dismissed. Held, in his action for wages, &c., that his dismissal was justified, and absolvitor granted. Plenderleith v Wight, 25, 246.

Dismissal—Justification—Absence from work.—Circumstances in which absence from work by a gardener without leave asked or given on two occasions, one for half a day and another for a whole working day, taken in conjunction with minor acts of a disrespectful nature, held (rev. Sheriff-Substitute) not sufficient to justify dismissal, the servant having established an excuse held sufficient. Ross v Kennedy, 21, 161.

Dismissal—Absence without leave—Shepherd and helpers.—A shepherd, engaged by the year to Whitsunday, as agreed brought with him two other workers, and all served on the farm. On 3rd January the shepherd absented himself without leave and without notice, to secure other employment. On his return his master dismissed him and his helpers. Held, in an action by the shepherd for wages earned and for damages (1) that the wages earned by the three men to date of dismissal were due; (2) that the dismissal was justified, and applied to all three servants; and (3) that therefore no damages were due to any of them. Beaton v Aitchison, 26, 197.

Dismissal—Faulty work—Servant going on working under improper conditions without complaint.—(1) Held

Master and Servant: Termination of Service—continued.

that a master was justified in dismissing a servant, a dairyman, for making faulty cheese, the servant having gone on making cheese under improper conditions without complaint. (2) *Held* that the master had no claim for damages for cheese faultily made. *Stewart v Drummond*, 27, 81.

Farm servant—Duration of employment—Presumption.

—*Held* that, in the absence of express bargain or special circumstances, a farm servant is presumed to be engaged for a year, at all events when he enters at one of the regular terms of Whitsunday or Martinmas. *Campbell v Cochrane*, 22, 115.

Notice — Schoolmistress. —*Held* that a school teacher, engaged without stipulation as to the duration of her service, or as to notice for its termination, was not entitled to more than six weeks' notice (given at any time) that the contract with her should end, that being a "reasonable period." *Opinion* that one month's notice was enough. *M'Clure v Macdonald*, 24, 134.

Notice—Engagement for fixed period. —When a yacht owner engaged a skipper for the first two months on probation, and subject to a week's notice on the part of the master, after which two months a new arrangement would, if the master were satisfied, be made, and the skipper served rather more than the two months, but on asking for a new arrangement was refused it, *held* that he was free to leave thereafter without notice, as the engagement was for a definite period. *Campbell v Mackenzie*, 29, 155.

Notice — General trade agreement as to notice—Posting up intimation. —*Held* that, where representatives of masters and workmen in a trade had agreed for a week's notice to terminate the engagement of individual workmen, and workmen had been engaged under reference to that agreement, a master did not abrogate the trade agreement by notice that workmen would be subject to be suspended at any time, posted up in his premises but not acquiesced in by the workmen; and workmen dismissed more than a week after the intimation, without further notice, *held* entitled to wages in lieu of notice. *M'Cann, &c. v Hair*, 30, 301.

Measures. *See* WEIGHTS AND MEASURES.

Meditatio Fugæ. . *See also* ARRESTMENT II.

Aliment—Unborn bastard—Debtors Act, 1880—Civil Imprisonment Act, 1882. —*Held* (rev. Sheriff-Substitute) that it is competent for a woman who is pregnant with an illegitimate child to obtain a warrant for the apprehension and imprisonment of the alleged father as being in *meditatione fugæ*. *A B v C D*, 21, 325.

Mine. *See WORKMEN'S COMPENSATION ACT I., IV.*

Minor. *See HUSBAND AND WIFE, PROCESS IV., VI., REPARATION II. (c), TITLE TO SUE.*

Moneylenders Act. *See LOAN.*

Mora. *See CARRIAGE II. (e), PRESCRIPTION, REPARATION I.*

Multiplepoinding. *See also ARRESTMENT VI., ASSESSMENT IV., REPARATION IV., RIGHT IN SECURITY.*

Competency—Exoneration of trustees—Double distress.—C, a creditor of A, son of the deceased B, arrested in the hands of trustees under B's will a sum of money, being legitim which was alleged to be due to A, but which A renounced after B's death. As the beneficiaries under the will maintained that the legitim fund was by A's renunciation set free and formed part of the residue, the trustees raised an action of multiplepoinding and exoneration. C (who meantime had brought an action of forthcoming) pleaded, *inter alia*, that, as there was no double distress, the trustees' action was incompetent. *Held* (rev. Sheriff-Substitute) that the multiplepoinding was competent. *Langlands, &c. v Langlands, &c.*, 23, 153.

Competency for distributing small succession—Small Debt Act.—*Held* that an action of multiplepoinding, brought by a creditor of a deceased person as real raiser, in name of an assurance company, with whom the deceased was insured, as pursuer and nominal raiser, was competent, notwithstanding that no common debtor was called as a party. *Britannic Assurance Co., Ltd. v Henderson, Ltd., &c.*, 27, 249.

Competency—Exoneration of executor, himself deceased's exclusive creditor.—An executor, who as an individual creditor claimed from the deceased's estate what would exhaust it, *held* entitled to raise a multiplepoinding in which he could constitute his claim judicially against the heirs and obtain exoneration. *Ironside v Ironside, &c.*, 27, 321.

Competency—Double distress—Auctioneers' conditions.—A dispute arose between the buyer and seller of a horse at an auction mart. The auctioneers had received the price paid to them by the buyer, whose recourse was against the seller only, and they retained the horse which the buyer returned, and which was then sold by them "for whom it might concern." *Held* that a stipulation contained in the conditions of the sale, exhibited at the mart, that the auctioneers should "be entitled to raise an action of multiplepoinding in connection therewith" was ineffectual, as there was no double distress. *Macdonald, Fraser, & Co., Ltd. v Johnstone, &c.*, 28, 204.

Competency—Double distress—Trustees shirking administration—Expenses.—In a multiplepoinding by trustees under a trust disposition and settlement craving exoneration, where

Multiplepoinding—continued.

the ground of action was small claims by two creditors, which the trustees had never dealt with, action *held* incompetent and dismissed, with expenses against the trustees personally. *Observed* that no beneficiary had refused a discharge, and that the beneficiaries were not in competition with the creditors or these with one another. *Bell, &c. v Sharp, &c., 29, 324.*

Competency and necessity—Restriction of fund in medio—Time for exonerating holder of fund—His expenses.—In holding an action of multiplepoinding competent, *opinions* as to the competency (1) of the real raiser restricting the sum *in medio*, and (2) of the Court delaying the exoneration of the real raiser, after payment into Court, until a later stage of the action; and finally *held* that the action was unnecessary, and the real raiser *refused* his expenses. *Coasting Motor Shipping Co., Ltd. v Nelson, &c., 30, 192.*

Expenses—Common debtor's liability.—The expenses of raising a multiplepoinding may be claimed and given against the common debtor. *North British Railway Co. v Provost, &c., of Helensburgh, 24, 310.*

Mutual Property. See COMMON PROPERTY.

Nautæ, Caupones, &c.

Innkeeper—Liability for guests' property—Dance in hotel.—Held, in an action for recovery of the value of a lost article left by a member of a dance party in the cloak-room of the hotel in which the party had hired rooms for the dance, that the innkeeper was liable. *Paton v Grand Hotel (Glasgow), Ltd.*, 25, 97.

Negligence. *See* CARRIAGE, LAW AGENT, LEASE II., III., NUISANCE, REPARATION, ROAD.

Novation. *See* CONTRACT III., LEASE IV.

Nuisance. *See also* EXPENSES I., PUBLIC HEALTH, ROAD II.

Neighbourhood—Congregating pigeons in street.—A householder in a burgh was for years in the habit of feeding pigeons with corn several times daily, and of thus bringing together increasing numbers of the birds, many of which sat on the roofs and rhones of the pursuer's house, conterminous with the defender's house, and, by their droppings, blocked and polluted the pursuers' pipes, &c., and littered their premises. This having occasioned material discomfort, annoyance, and injury to the pursuers, held that they were entitled to interdict the feeding and enticing of the pigeons. Allison, &c. v Stevenson, 24, 214.

Neighbourhood—Escape of weevils from grain store—Fault—Reparation.—The proprietors of a grain store received into their premises in the ordinary course of their business a consignment of barley infested by weevils, which escaped into neighbouring shops and caused damage. In an action by the tenants of these shops, held (1) that the defenders, by storing the weevilled consignment of barley, had rendered themselves liable in damages for the consequences without proof of specific fault, and (2) that fault had been proved, in respect that they failed to take precautions to secure their neighbours against injury. Blair, &c. v Springfield Stores, Ltd., 27, 178.

Neighbourhood—Byre within a burgh—Interdict ab ante.—In an action by residents in a burgh, craving interdict of the building of a byre there (which had been sanctioned by the Guild Court) and of the keeping of cattle in the byre and driving them to and from it, held that the carrying on of the business of cow-keeping within a burgh would not necessarily be a nuisance, and interdict refused. Simpson, &c. v Duncan, 30, 125.

Nuisance—*continued.*

Noise—Railway whistling at night—Statutory business—Interdict.—An action *dismissed* as irrelevant, the purpose of which was to interdict a railway company from “routing” trains by steam whistle signalling at night in the neighbourhood of the pursuer’s dwelling. *Rennie v North British Railway Co.*, 26, 100.

Owner's Risk Note. *See* CARRIAGE II., SHIP I.

Parent and Child. *See also ALIMENT, BASTARD, CRIME, HUSBAND AND WIFE I., SCHOOL, VITIOUS INTROMISSION.*

Custody—Interim custody—Mother's inversion of possession—Sheriff.—When the mother of a legitimate child, living apart from her husband, removed from his custody and retained the child, *held* that it was competent for the Sheriff to restore the state of possession till a competent Court should decide the competition between the parents, and delivery *ordered*. *Cairns v Cairns*, 22, 51.

Custody—Illegitimate child—Father's claim—Retention by third party against claim for aliment—Sheriff—Custody of Children Act, 1891, sec. 2.—An illegitimate female child, placed out with a stranger for maintenance, was claimed by her father after the parents had intermarried, but the stranger detained her on the ground that he had been granted permanent custody of the child in consideration of alimenting her, and that he should not be deprived of the custody without payment of the full amount which her maintenance had cost. *Held* that sec. 1 of the Custody of Children Act, 1891, applied, that a question had been raised in the defence for the discretion of the Court under that section, and that, as the Court referred to is in Scotland the Court of Session, the Sheriff could not competently deal with the case, and it was *dismissed*. *Opinion* that the Sheriff has jurisdiction as to the custody of children where the privative jurisdiction of the Court of Session is not involved. *Marshall v Smith*, 21, 60.

Custody—Legitimate child—Father's claim—Counter claim by holder of child for its aliment—Sheriff.—In a petition by the father of a legitimate child for delivery of it to him, raised against its maternal grandparents, who had maintained it since the death of its mother, and who counter claimed for its aliment, *held* that the Sheriff had jurisdiction at common law, if not by virtue of sec. 5 (2) of the Sheriff Courts Act of 1907, to order delivery to the father, and that the counter claim was competent under rule 55 of the Act in the action for delivery, though retention was not a good defence. *Tuill v Taig, &c.*, 27, 195.

Custody—Permanent custody—Sheriff.—A woman, who was living apart from her husband on the ground of his alleged cruelty and violence, brought an action to have the husband ordained to deliver their child into her custody. *Held* that the action, being one to regulate the permanent custody of the child, was incompetent in the Sheriff Court. *Cairns v Cairns*, 21, 207.

Custody—Permanent custody—Sheriff—Sheriff Courts Act, 1907, sec. 5 (2).—In an action by a father against his wife

Parent and Child—continued.

for delivery of their child, declarator of his right to custody of the child, and interdict of any breach of that right, the mother did not enter appearance but delivered the child. Thereafter on a motion (in absence) for declarator and interdict, *held* that the Sheriff had not, under the Sheriff Courts Act or otherwise, power to regulate the custody of children in a substantive action (if such there might be) for that end. *Observed* that the statute does not widen the jurisdiction of the Sheriff in the matter; that a Sheriff may deal with custody in an action for separation and aliment, but only in the limited way competent to a Lord Ordinary; and that the statements in an initial writ in the form in use in 1910 would be meagre foundation for the necessary inquiry if inquiry were competent. *Naysmyth v Naysmyth*, 26, 319.

Legitimation per subsequens matrimonium—Child conceived bona fide—Child conceived mala fide.—A child born of a marriage which is subsequently found to be null, and the child therefore illegitimate, in consequence of the existence of an impediment to the marriage (a previous marriage of one of the parents) may be legitimated by the subsequent marriage of the parents after the impediment is removed. Rule *applied* (1) to the case of a child conceived in good faith (both parents at conception believing that the impediment did not exist), although born when they knew the impediment to exist; and (2) to the case of another child conceived in the knowledge of both parents that the impediment existed, but born after it had been removed and before the re-marriage of the parents. *Bremner, &c. v Watson, &c.*, 28, 339.

Parish Council. *See* ELECTION, EXPENSES I., LOCAL GOVERNMENT, POOR I.

Partnership. *See also* BANKRUPTCY II., IV. (b), VII., I O U.

Constitution—Joint adventure—Advance to builder—Liability of lender for goods.—Under an agreement between an accountant and a builder an advance was made by the accountant to the builder to enable him to erect buildings. It was provided in the agreement that interest at 10 per cent. should be paid on the loan, and that the lender should have the control of all cash matters, the paying of accounts and tradesmen's wages, and the engagement and dismissal of the men employed in the work; and that he was to get a conveyance of the subjects to be built in security of the advances. The conveyance was granted, as well as a back letter showing that it was only in security. In an action for the price of bricks supplied for the work, *held* that the lender—whose concern was solely to have security for his loan and interest on it, but who was not to share in any profits—was not a joint adventurer with

Partnership—continued.

the builder, and was not liable for the account. *Springburn Brick and Quarry Co. v M'Kean, &c.,* 23, 278.

Constitution—Cautionary agreement—Repugnancy.—On a construction of a minute of agreement between S and M, in which it was stipulated (a) that S should have equal interest with M in the business carried on by M, and he made himself equally responsible for the losses of it; (b) that the business should be sold when all debts affecting it had been paid, S reserving a right to buy; and (c) that S should have the power to terminate the agreement if at any time M should neglect the business or misconduct himself in any way, held, notwithstanding a clause that the agreement was not to operate as a contract of copartnery or bind S for any of M's obligations, except in so far as S had already undertaken them, that S was a partner in the business, and, as such, liable for debts contracted by M in connection with the business. *Dawson v M'Lean, &c.,* 27, 59.

Dissolution—Liability of new firm for debts of firm to whose business it has succeeded.—Circumstances in which it was held that a new firm was not liable for a debt of a former firm to whose business it had succeeded, though vouched by a bill accepted in the common name of both firms. *Campbell & Calderwood v Chalmers & Co.,* 22, 94.

Dissolution—Difference as to winding up—Partner's application to be appointed liquidator—Sheriff.—Held, in a petition by one of two partners, who had retired from his firm, to have himself appointed liquidator, that the Sheriff was not competent to deal with the matter. *Weir v Weir,* 23, 233.

Dissolution—Winding up—Remanent partner's powers—Renewal of bills—Partnership Act, 1890, sec. 38.—In a competition for the trusteeship in a sequestration, held that the surviving partner of a firm dissolved by the death of one of its partners had, by sec. 38 of the Partnership Act of 1890, a continuing authority to renew bills by the firm current at the date of dissolution. *Mitchell's Sequestration,* 25, 69.

Dissolution—Winding up—Remuneration of partner winding up.—Held that a partner cannot claim remuneration for work in winding up the partnership, without bargain for such remuneration. *A v B,* 28, 295.

Dissolution—Winding up—Liquidator's title to sue.—James Reid, as sole surviving partner of John Reid & Co., ship-builders, Port-Glasgow, sued John Reid & Co., naval architects, Glasgow, for delivery of a letter delivered to the defenders, averring that it was intended for his firm, dissolved twenty-two years before, and he also sued for damages arising from the defenders' attempt to appropriate to themselves the business introduced by the letter. Held that his case was irrelevant, as he had not sufficiently specified a title to sue—the authority of a partner by sec. 38 of the

Partnership—*continued.*

Partnership Act, 1893, being limited to winding up of matters existing at the dissolution. *Reid v Reid & Co., 29, 211.*

Goodwill—Right of ex-partner who has sold his interest in firm's goodwill to advertise his former connection with it—"Senior partner."—Two brothers had been copartners in a business with equal rights. The elder brother retired from the business, and the remaining partner acquired the partnership assets, including the goodwill, with the right (which he exercised) to continue the business in the firm-name. The elder brother having begun business next door in his own name, and advertised himself as "late senior partner" of the firm, the younger brother sued to have such advertisement interdicted, on the ground that the word "senior" conveyed unfairly a suggestion that the elder brother had been a predominant partner of the dissolved firm. Held that the words "senior partner" had no legal and no definite popular signification, and that the defendant, on account of his seniority in years over his brother and late copartner, was entitled to describe himself as the "late senior partner," and action dismissed as irrelevant. *Greig Brothers v Greig, 22, 82.*

Partner's mandate to bind firm—Letter waiving objections to diligence—Sequestration for firm's rent.—Held that a letter, granted by one partner of a firm and signed with the firm's signature, admitting that rent for partnership premises was due, and consenting to sequestration, without the landlord obtaining a warrant to carry back, of goods which had been removed from the premises in respect of which the rent was claimed, was binding upon the firm. *Douglas v Kennedy & Young, 21, 43.*

Passive Representation. *See VITIOUS INTROMISSION.*

Payment. *See DISCHARGE; also AGENCY II., BANKRUPTCY III., V., BILL OF EXCHANGE, CONTRACT III., EVIDENCE, PRESCRIPTION I., SALE IV., V.*

Penalty. *See INTEREST, PROCESS I., III., VI.*

Personal Bar. *See ARRESTMENT III., BANKRUPTCY IV. (b), (c), BILL OF EXCHANGE, CARRIAGE, CONTRACT III., FORTHCOMING, LAW AGENT, SALE II., III., IV., WORKMEN'S COMPENSATION ACT I., V. (a), (b), (g).*

Pleading. *See INTERDICT, PROCESS I., VI.*

Pledge. *See also HIRING II.*

Fraudulent pawning—Restitution—Pawnbroker's claim to compensation—*Pawnbrokers Act, 1872, sec. 30 (3)—Court of summary jurisdiction.*—A woman, who obtained possession of a sewing machine on a contract of hire-purchase—in virtue of which the property remained with the hirers until

Pledge—*continued.*

the last instalment had been paid—and who had not paid to the owners the price stipulated for in the agreement, pledged the machine with the defender, a pawnbroker. *Held* that sec. 30, sub-sec. (3) of the Pawnbrokers Act, 1872, authorising a Court of summary jurisdiction in proceedings before it to award payment to a pawnbroker in its discretion, did not apply to the Sheriff's Small Debt Court, and that therefore the owners were entitled to decree of delivery against the pawnbroker, without repaying the advance made to the woman, who had no title to pledge the machine. *Singer Sewing Machine Co., Ltd. v Quigley*, **30**, 56.

Loan—Proof—Parole—Possession.—*Held*, in an action raised for delivery of a diamond ring, where the defence was that the ring was pledged for a loan, that parole was admissible to prove the whole circumstances of the case, and that the defenders were not limited to writ or oath. *Niven v M'Arthur's Trustees*, **23**, 299.

Sale—Deficit—Pawnbroker's right to sue pledger.—In the case of a pledge for more than 10s. and not more than £10, where the sale of the pledged article realised less than the sum due under the contract of loan, *held* that neither the contract (in ordinary form) nor the Pawnbrokers Act of 1872 precluded the pawnbroker from suing the borrower for the deficit, and decree *granted* therefor. *M'Millan v Conrad*, **30**, 275.

Poaching. *See* GAME, REPARATION I.

Poinding. *See also* BANKRUPTCY I., III., DEBTS RECOVERY ACT II., EXPENSES II., JURISDICTION, LEASE IV., PROCESS I., REPARATION I., IV., SMALL DEBT ACTS, WINTER HERDING ACT.

Breach of poinding—Remedy—Form of process.—*Held* that an application intended to make operative sec. 30 of the Debtors (Scotland) Act, 1838 (Personal Diligence Act) is a civil, not a criminal, process, and that the proper procedure is not by way of an ordinary action, but by way of a summary application. *Angus Brothers, Ltd. v Crocket*, **25**, 322.

Breach of poinding—Remedy—Procedure.—*Held* (1) that a third party claiming poinded goods, who, in full knowledge of the poinding, took possession of them and sold them without appearing in the poinding, and who did not present any interdict against the threatened sale, was an unlawful intromitter, and decree *granted* against him ordaining him to restore the poinded effects, with, failing restoration within a given period, warrant for his imprisonment until restoration, or until payment of double the appraised value; and (2) that it is unnecessary to specify the amount of the debt in the schedule of poinding, though it must be specified in the execution of poinding. *A and B v Allan*, **27**, 139.

Poinding—*continued.*

Equalisation of diligence—Reporting sale and lodging price—Personal Diligence Act, 1838, sec. 28.—A poinding creditor, having executed a sale of his debtor's effects, got payment from the sheriff officer of the free proceeds of sale. On the day previous to the sale being reported, a creditor lodged with the Sheriff-clerk (as did other creditors after the sale had been reported) liquid grounds of debt and claims to a proportionate ranking on the net proceeds of sale. *Held* that, the payment to the poinding creditor not having in the circumstances been a lawful payment, the process of poinding was not terminated thereby, and that the proceeds of the sale remained *in manibus curiae* and at the disposal of the Court by order as provided by sec. 28 of the Personal Diligence Act, 1838, and order to consign granted. *Gillon & Co., Ltd. v Christison*, 25, 283.

Objections to procedure in carrying out.—Opinion that a poinding executed after sunset was incompetent. *Observations* as to the essentials of the schedule and the method of appraising effects in slump. *Urquhart & Son v Wood*, 22, 255.

Selling effects of third party—Damages—Officer ineffectually notified.—*Held* that a sheriff officer was entitled to proceed with the sale of poinded effects when the amount in the decree was not actually tendered to him, and when an indication that the goods were a third party's was unspecific. *Aitkenson Brothers v M'Harg, &c.*, 27, 258.

Poinding the Ground. *See* RIGHT IN SECURITY, SUPERIOR AND VASSAL.

Police. *See also* ARRESTMENT II., ROAD.

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I. Dean of Guild.

Ruinous buildings—Order for sale—Whether statutory notice in competent form and specific—Burgh Police Act, 1892, sec. 200—Burgh Police Act, 1903, schedule 1.—The town council and dean of guild court of a burgh sent a notice to the owners of a property in the burgh stating that it was waste and ruinous, or had become a receptacle for filth, or unsafe or unfit for use (in terms of the statutes), and intimating that they required it to be rebuilt or otherwise put into repair to their satisfaction, and that if the requisition was not complied with the Sheriff would be applied to for warrant to sell the property. In the application to the Sheriff *held* that the notice was invalid, in respect that it contained no specification of the operations required to satisfy the council. *Provost, &c., of Airdrie v Andrew, &c.*, 21, 255.

Police: Dean of Guild—continued.

Lining — Projection — Upper window — Discretion of magistrates.—In an appeal against the refusal of a burgh dean of guild court to sanction the re-erection of a building, with an upper window projecting beyond the line of the street, held that that line was not limited to the street level, and that the discretion of the dean of guild court could not be reviewed, and appeal refused. *Smith, &c. v Provost, &c., of St. Andrews, &c.,* 29, 356.

II. Footway.

Formation — Action for expense — Prior appeal dismissed — Counter claim — Burgh Police Act, 1892, secs. 141, 339, and 368.—Where the town council of a burgh called by notice upon an owner to form a footway fronting his property, and, he having failed to do so, themselves executed the work and charged him with the expense thereof, against which he appealed to the police commissioners and was heard, held in an action for payment of the said expense that their decision was final, and that a counter claim for ground paved as part of the street, but still the feuar's property, was incompetent in the action for payment. *Provost, &c., of Hamilton v Cooper,* 25, 314.

Formation — Charge for more than work ordered — Temporary improvement — Burgh Police Act, 1903, sec. 17 (5).—A town council required a frontager in burgh to do renewal work on about one-third of the footway abutting on his lands in terms of sec. 17 (5) of the Burgh Police Act of 1903, and, he having left them to do it and charge him therefor, they renewed the whole length of the abutting footway and required him to pay the whole cost. He appealed against the order to pay, and the Sheriff restricted the claim to one-third of the cost. Held also that the appeal was competent, the respondents having transgressed the bounds of the statute. Opinion that the character of the lands, qualifying the operation of sec. 141 of the Act of 1892 (as to forming footways permanently), does not affect a requisition under the clause first above cited. *Ferrier v Provost, &c., of Melrose,* 24, 178.

Formation — Discretion of town council — Width.—The appellant proposed laying a foot-pavement of an average width of 2 feet 4 inches in a lane about 9 feet wide. The council resolved that the pavement should average only 9 inches in width. Held, on appeal against this resolution, that the town council were best able to judge as to the width required for the convenience and safety of foot-passengers, and appeal dismissed. *Gray v Town Council of Coupar Angus,* 21, 214.

Formation — Discretion of town council — Material.—Held that averments as to the unsuitability of concrete paving for a suburban road, &c., were irrelevant, such matters being matters of ordinary municipal administra-

Police: Footway—continued.

tion, which must be left to the discretion of the town council.
Shaw's Trustees v Provost, &c., of Inverness, 24, 89.

Formation—Order to form after general resolution to maintain—General Police Act, 1862, sec. 155—Burgh Police Act, 1892, sec. 141.—Where the police commissioners of a burgh, in 1882, resolved to undertake the maintenance and repair in future of the footways within the burgh, in terms of sec. 155 of the General Police Act of 1862, and to levy a special paving assessment on owners for that purpose, held that this did not preclude them from calling upon owners of heritages in 1907 to form a concrete pavement in front of their properties, in terms of sec. 141 of the Burgh Police Act, 1892. *Shaw's Trustees v Provost, &c., of Inverness*, 24, 89.

Formation—Discretion of town council—Material—Relaying permanently soon after temporary repair—Burgh Police Act, 1892, sec. 141.—Where a town council required a person, whose property fronted a footway in one of the town streets, to provide a portion of the footway with kerbs and water channels and lay it with gravel in terms of sec. 17 (5) of the Burgh Police Act, 1903, and, within a few months after the work was done by the town council (on the frontager leaving it to be so done at his expense), required him to make the same footway with concrete in terms of sec. 141 of the Burgh Police Act, 1892, the latter requisition was quashed on appeal, in the absence of any statement that the new work was so soon afterwards required by the public interest. *Ferrier v Provost, &c., of Melrose*, 24, 181.

Formation—Discretion of town council—Material—Burgh Police Act, 1892, sec. 141.—Held that whether Caithness flags or granolithic was the more suitable material for paving a footpath was a question which fell to the town council to decide, and, having been duly considered by them, should not be interfered with by the Sheriff. *Port-Glasgow Property Investment Co., Ltd. v Provost, &c., of Port-Glasgow*, 25, 86.

Formation—Frontager—Railway abutting—Parapets of bridge.—A railway company's line was crossed by a bridge belonging to them and carrying one of the streets of a burgh. The burgh required the company, as owners of premises fronting or abutting on the street, to construct a footway on the bridge. Held that in respect of their being owners of the parapets which were so situated, the company were liable for the expense of forming the footway. *North British Railway Co. v Alloa Town Council*, 26, 77.

Formation—Frontager—Owners of land fronting or abutting—Use or servitude (non-beneficial) of land—Railway bridge approach.—A railway company had right from the owners of land to raise it for carrying a road upon it up to a bridge over their railway, but the right was not

Police; Footway—continued.

made a real burden or a servitude. They were required by the burgh to form a footway on the bridge and on the raised part of the road. *Held* (1) that their ownership of the bridge, of which they had no beneficial use, or their ownership of the railway, which did not front or abut on the road, did not subject them to liability for forming the footway on the bridge, and (2) that they were not owners of the raised strip, and as such liable to form a footway upon it. *Caledonian Railway Co. v Town Council of Leith*, 30, 83.

Formation—Lands unbuilt on—Temporary improvement—Burgh Police Act, 1892, sec. 141—Burgh Police Act, 1903, sec. 17 (5).—A town council sued for the expense put out by it under sec. 17 (5) of the Burgh Police Act of 1903 in temporarily improving the footpath abutting on a property of over 100 yards frontage, which the proprietors had failed to improve when called on. The proprietors tendered a third of the expense, explaining that their ground was not yet built on, &c., in the sense of sec. 141 of the Burgh Police Act of 1892. *Held* that the two enactments must be read together in terms of sec. 5 of the later Act, and that the defenders' position was correct in the meantime, though only temporary expenditure was involved. *Melrose Town Council v Scott's Trustees*, 22, 339.

Formation—Lands unfeued or unbuilt on—Railway line, signal-boxes, &c.—A railway company was ordered by a burgh, in which part of its line lay, to form a footway in the road by which the line was bounded. Along the whole boundary (more than 100 yards long) was a retaining and boundary wall, without opening to the railway lands. An embankment, platforms, signal-boxes, rails, telegraph posts, &c., stood on the lands. *Held* that the lands were not excepted as unfeued or unbuilt on in the sense of sec. 141 of the Police Act of 1892, and that the company was bound to form the footway. *Caledonian Railway Co., &c., v Provost, &c., of Dumbarton*, 30, 308.

Formation—Paving order—Appeal against resolution and charge of private improvement expenses—Burgh Police Act, 1892, secs. 339 and 368.—*Held* that the only competent appeal against a resolution assessing an individual for private improvement expenses is to the town council themselves, as provided in sec. 368, and that the operation of sec. 339 (anent appeal to the Sheriff) is excluded wherever a special provision as to appeal is made in the statute in regard to a particular matter. *Lambie v Provost, &c., of Port-Glasgow*, 22, 150.

Obstruction—Appeal or interdict—Burgh Police Act, 1892, sec. 160.—Where the town council of a burgh, having undertaken the maintenance of footways, ordered the pursuer to remove an obstructive step erected in front of her dwelling-house, *held* in her interdict action that, as the statutory right of appeal conferred by secs. 165 and 339 of the Act was not exercised, interim interdict should not be granted;

Police: Footway—continued.

and, as the pursuer did not aver that the defenders had acted *ultra vires*, action dismissed. *Minty v Provost, &c., of Macduff*, 25, 194.

III. Sewer.

Restoration of private ground penetrated—Burgh Police Act, 1892—Public Health Act, 1897—Public Authorities Protection Act, 1893.—An action was raised against the magistrates of a burgh by the owner of ground through which the defenders had laid pipes for the burgh's sewage purification, for the purpose of having the surface of the ground restored to its former condition. Held that the defenders' operation had been conducted in conformity with the Burgh Police Act of 1892, which was not repealed by the Public Health Act of 1897, and that the action, not having been commenced until after the expiry of six months from the completion of the operations complained of, must be decided in favour of the defenders in terms of the Public Authorities Protection Act of 1893. *Yuill, &c., v Provost, &c., of Lanark*, 22, 153.

IV. Street.

Obstruction—Overhead bridge—Delegation of sanctioning powers.—A town council of a burgh which had no power by sec. 132 (3) of the Burgh Police Act of 1892, or otherwise, to allow bridges across streets, remitted an application for the sanctioning of such a bridge to a sub-committee “with powers,” and the committee granted the application, subject to the burgh engineer's approval. A neighbouring proprietor appealed to the Sheriff, intimating the appeal only to the town council. The town council appeared, and the applicants, having got later intimation, craved to be, and were, sisted as respondents. Held that the applicants had no title to erect the bridge, and that the town council had no power to sanction the bridge or to delegate the sanctioning of it. *Dundee Tramway and Carriage Co., Ltd. v Dundee Town Council*, 24, 282.

Private street—Formation—Warrant—Limiting period for opening up street.—A landowner, applying to a town council in terms of sec. 11 of the Burgh Police Act of 1903 for a warrant to form a new throughgoing street, obtained one to which the town council, in virtue of secs. 11 and 12 of the Act, adjected the condition “that in order to avoid a *cul de sac* the new street shall be opened from end to end within a period of five years from date of warrant.” On appeal to the Sheriff the condition was *deleted* from the warrant as *ultra vires* of the town council, the Sheriff holding that the council had no power to prevent a temporary *cul de sac* while the street was being built on according to the opportunities and necessities of the proprietors, the proprietors, on the other hand, being unable to deviate from the plan warranted unless the town council authorised

Police: Street—continued.

the change. *Earl of Dalhousie v Town Council of Broughty Ferry*, 21, 209.

Private street — Formation — Temporary levelling — Charge of private improvement expenses on lands liable — Resolution to improve not minuted — Burgh Police Act, 1892, secs. 365, 366.—In order to constitute private improvement expenses incurred in the temporary formation of a private street a burden on lands adjoining the street, so as to make them recoverable from a singular successor, the town council must formally and properly charge and impose the expenses under secs. 365 and 368, and this can only be done by minuting the resolutions and other necessary particulars in the town's minute book. *Leven Magistrates v M'Arthur*, 23, 158.

Private street — Formation — Recovery of cost — Appeal — Burgh Police Act, 1892, sec. 368.—Where the owner of premises fronting a private street in burgh, on which expenses of making and improving had been incurred by the town council on default of the owner, received notice, under sec. 368 of the Burgh Police Act, that the expenses would be imposed on him as private improvement expenses, held, in an action for their recovery as debt, that the town council was entitled to the alternative of proceeding by such action, and that the owner was not prejudiced by his not having the right of appeal to the town council provided by the section. *Corporation of Kilmarnock v Caldwell*, 27, 309.

Private street — Formation and paving — Access to railway station — "Part of a railway."—A railway company acquired under its special Act some acres of ground, on which it laid its line and constructed a passenger station, a goods station, and a short approach from a public road to the station for foot traffic and vehicular traffic; and it left the approach open to the public as an access to the passenger station for fifty years. Thereafter the town council of the burgh in which the ground lay issued, under sec. 16 of the Burgh Police Act of 1903, an order on the company to form and pave a footway in the approach, contending that the approach was a private street in the sense of the Burgh Police Acts. Held that the approach formed part of the company's railway in the sense of the exception to the 31st sub-section of sec. 4 of the Act of 1892, and that the order fell to be recalled. *Highland Railway Co. v Dingwall Town Council*, 29, 65.

Poor. See also ALIENS ACT, ASSESSMENT III., IV., LUNATIO.

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I. Administration.

Admission of liability for relief — Withdrawal on ground of fraud — Sheriff.—Where a parish council, after consideration of a

Poor: Administration—continued.

notice by another parish council that it held the first council liable to repay advances made to a pauper by the second council, admitted liability, *held*, in an action for effecting repayment, that the statutory admission could not be withdrawn by the giver and the liability to repay negatived by the Sheriff, even on strong averments of the pursuers' fraudulent misrepresentation of the facts inducing the admission; and plea of fraud in defence *repelled* as irrelevant. *Greenock Parish Council v Kilmore and Kilbride Parish Council*, 30, 130.

Audit of parish council accounts—Illegal payments—Surcharge—Persons making payment—Local Government (Scotland) Acts, 1889, sec. 70 (5); 1894, sec. 36.—At a monthly meeting of Glasgow Parish Council certain accounts were submitted and passed. A cheque for the total amount was drawn in favour of the treasurer, and signed by the chairman, another parish councillor, and the clerk. This omnibus cheque was paid into an account kept in the name of the treasurer, and the individual accounts were paid by him to the creditors of the council by cheque or in cash. On the report of the auditor of the parish council the Local Government Board issued a determination surcharging certain payments included in the cheque on the persons who had signed it, as being the persons making the payment in the sense of the Act. *Held* (rev. Sheriff-Substitute) that these persons had been properly surcharged. *Hutchison v Adam, &c.*, 23, 172.

Combination of parishes—Relief of management expenses.—Where certain parishes combined to erect a poorhouse and agreed to the management expenses being defrayed by them in certain proportions, *held* that one of the parishes which had sent in a pauper who was found to be ultimately chargeable to another of the parishes had no relief against the latter parish for any part of the expenses of management. *Parish Council of Row v Parish Council of Dumbarton*, 21, 320.

Local Government Board's control—Sheriff.—Circumstances in which a pauper applied to the Local Government Board for revision of an order by a relieving parish consigning him to its poorhouse, and, the Board having issued contradictory adjudications on the application, the Sheriff *held*, in an action between parishes for relief of advances, that he could not competently overrule the Board's latest adjudication. *Parish Council of Stornoway v Parish Council of Harris*, 23, 17.

II. Relief.

Destitution—Ability to work—Ex-school teacher.—*Held* that a discharged board school teacher, aged sixty-one, who was unable to secure another situation as teacher, who had no means and nobody able to maintain him, and who could not do manual work owing to bodily inability, was entitled

Poor: Relief—continued.

to relief and to the expenses of his application. *Macrae v Parish Council of Lochalsh*, 28, 346.

III. Settlement.

Residential settlement—Loss—Relief of bastard of pauper—Child separated from mother.—A woman, having two illegitimate children dependent on her, had her residential settlement in Kirriemuir parish, which maintained one of them, while she maintained herself and the other elsewhere. After her absence from Kirriemuir for the statutory period, she required parochial relief, and got it from Forfar parish, which claimed repayment from Kirriemuir and the parish of her birth settlement. *Held* that Kirriemuir was liable, as she still retained her settlement there by its relief of her child, no effort having been made by Kirriemuir to escape liability for the child, and therefore (distinguishing the case from that of a father) for the mother. *Forfar Parish Council v Kirriemuir Parish Council and Coupar-Angus Parish Council*, 29, 111.

Residential settlement—Acquisition—Blind child scholar in institution.—*Held* that a blind girl, who was sent by the school board of her father's settlement parish to an institution in another parish for education in terms of the Education Act of 1890, both her parents being dead, and remained there after school years for a less time than would give her a residential settlement there, had not acquired such a settlement by residence under the statute, even continued voluntarily. Cases of voluntary residence in charitable institutions distinguished. Question whether she constructively resided all the time in the parish of her father's settlement. *Kirkcaldy and Dysart Parish Council v Edinburgh City Parish Council*, 30, 29.

Poor Roll. See **PROCESS IV.****Possession.** See **BANKRUPTCY IV. (c), PARENT AND CHILD, PROPERTY.****Præpositura.** See **AGENCY I., HUSBAND AND WIFE I.****Preference.** See **ASSESSMENT IV., BANKRUPTCY III., COMPANY, WORKMEN'S COMPENSATION ACT V. (b), (h).****Prescription.** See also **CAUTIONRY, CONTRACT II., HIRING I., POLICE III., PROCESS IV., PUBLIC HEALTH, REPARATION I., ROAD II.**

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I. Triennial.

Law agent's account—Effect of entries extending to within period, but not charged for.—*Held* that entries in a law agent's account, against which no charges were entered, but which showed a continuance of employment, were, when

Prescription : Triennial—continued.

not fictitious, sufficient to elide the plea of prescription. *A and B v C D's Trustees*, 24, 199.

Law agent's account—Constitution by writ—Procedure.—One of two trustees employed a law agent by letter to do work for the trust. The lawyer sued the trustees for his account, but failed to prove their instructions, and his action was dismissed. He then sued in the Small Debt Court the trustee who had written to him. *Held* that there was no *res judicata*, that the triennial prescription applied, that the letter, when proved, would constitute the claim, and that thereafter the resting-owing of the debt must be proved by the defendant's oath or by his writ dated after the years of prescription, and the account must then be taxed. *Storrie v Bruce*, 29, 138.

Merchant's account—Subsequent continuous course of dealing.

—Circumstances in which a farmer's claim for the price of milk supplied seven years before was remitted for proof by the pursuer's writ or oath, although the parties had settled fortnightly for supplies made continuously throughout the seven years. *Middleton v Barron*, 22, 328.

Merchant's account—Interruption—Payments to account—Pass-book.—*Held* that payments to account, noted in a pass-book during three years after the date of the last article supplied, do not elide the triennial prescription, and proof *prout de jure refused*. *Mills & Co. v M'Luckie, &c.*, 28, 215.

Merchant's account—Compensation—Intrinsic or extrinsic—Proof of amount.—In an action for payment of an account, the defendant pleaded prescription and a contra account, and the constitution and subsistence of the debt sued for and of the contra account (which was also prescribed) were referred to the oaths of parties. The defendant admitted part of the debt sued for, but deponed that part thereof had been paid in cash and the rest had been wiped out by his larger contra account, and he did not assert any agreement to set off accounts. *Held* that the quality of the question of compensation was extrinsic, but the defendant was entitled to proof *quoad* the amount of his contra account, the existence but not the amount of which the pursuer admitted in his oath. *Stewart, Bissett, & Brown, Ltd., &c. v Gavin*, 28, 322.

Merchant's account—Interruption—Several grounds of debt—Pursuing within three years.

—A pursuer's account for goods ended on 2nd February, 1910, but he added to it items for outlay as factor for the defendant's heritable property, items due as heritable creditor under a bond, and sundry expenses of a lawsuit. *Held* that these could not be legally added so as to continue the account to 1913 and elide the triennial limitation, and that an incidental reference to the account in the previous lawsuit was not pursuit of the debt in the sense of 1579, cap. 83, and did not elide the prescription. *Gair v Munro*, 29, 348.

Prescription : Triennial—continued.

Servants' fees—Managing director's remuneration.—*Held* that remuneration to a managing director did not fall under the head of “servants' fees or other the like debts” within the meaning of the Triennial Prescription Act, and therefore was not prescribed so as to limit the mode of proof. *Lunn v Aitchison & Sons, Ltd., &c.,* 24, 194.

II. Vicennial.

Loan — I O U — Proof of genuineness.—A pursuer found ing on an I O U alleged to be by the defender, sued for repayment of a loan more than twenty years after its date. The defender pled that it was prescribed, as depending on a holograph writ. *Held* that an I O U is a holograph writing falling within the vicennial prescription, and that proof of its verity must be by oath of the defender; *pro cedure* thereupon; and *absolvitor* when the oath found negative of the reference. *Barrie v Barrie,* 27, 165.

III. Statutory Limitation of Action.

Public Authorities Protection Act, 1893—Terminus a quo—“Act complained of.”—The occupier of premises in a burgh sued for damages in respect of the flooding of his premises with water from a pipe of the corporation of the burgh. It appeared that the flooding was caused by one of the defenders' workmen having injured the pipe three years or more before the flooding. *Held* that this injury was the “act complained of,” from the date of which ran the six months' limit for suing left by sec. 1 of the Public Authorities Protection Act of 1893, and the action was therefore too late. *Craig v Corporation of Glasgow,* 21, 181.

Public Authorities Protection Act, 1893—Municipal trader.—Circumstances in which the Act was held to apply. *Simpson v Corporation of Glasgow,* 21, 318.

Public Authorities Protection Act, 1893, sec. 1.—Action of relief—Time from which six months run.—*Held* that harbour commissioners, composed, under a public statute, of members of the public, with a public statutory purpose, and acting solely for the public benefit, with no object of gaining profit for individual shareholders, are entitled to protection under the Act. *Christie v Corporation of Glasgow,* 31st May, 1899, distinguished. *Held* further, that an action for relief of damages, raised within six months reckoned from the date of the decree for damages but after a longer period reckoned from the fact occasion ing the damages, was too late to be entertained, and that it must be dismissed, with expenses as between agent and client in terms of the Act. *Grimmer, &c. v Aberdeen Harbour Commissioners,* 22, 196.

Statutory limitation of period for proceedings—Children Act, 1908, sec. 1 (6) and (7)—Contravention of statute—Failure

Prescription : Statutory Limitation of Action—continued.

to give notice—Summary Jurisdiction Act, 1908, sec. 26.—Where a complaint was raised on 30th March, 1912, in respect of failure to obey sec. 1 (6) of the Children Act, 1908, by giving notice within one month from 1st April, 1909, the date of the commencement of the Act, of the reception of an infant under an undertaking for reward, held that the complaint was incompetent, because proceedings had not been commenced, in terms of sec. 26 of the Summary Jurisdiction Act of 1908, within six months of the last date of contravention, there having been after the end of April, 1909, no statutory direction as to notice to be contravened. *Parish Council of Glasgow v Wright, &c., 28, 292.*

Presumption. See FEE AND LIFERENT, HUSBAND AND WIFE, LEASE, SHIP I.

Privilege. See BANKRUPTCY III., SLANDER, TITLE TO SUE.

Process. See also ARRESTMENT I., II., V., BANKRUPTCY IV. (a), (b), V., CONTRACT III., DEBTS RECOVERY ACT, ELECTION, EXPENSES, HIRING III., JUDICIAL FACTOR, JURISDICTION, MULTIPLEPOINDING, POINDING, POLICE, PUBLIC HEALTH, REPARATION I., IV., V., SHERIFF, SHIP IV., SMALL DEBT ACTS, TITLE TO SUE, WORKMEN'S COMPENSATION ACT V.

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I. Form of Petition.

Form of action—Instance—Unincorporated association—Sheriff Courts Act, 1907, sec. 3 (e) (n).—Held that an unincorporated association, being a “person” for the purposes of the Sheriff Courts Act of 1907, may pursue in its name alone, provided it has authority to do so; and that its authority does not require to be set forth in the instance. *Greengairs Rovers Football Club, &c. v Blades, &c., 26, 280.*

Form of action—Interdict of sale under poinding—Competency against officer alone.—Where a woman asked interdict against a sheriff officer selling under a poinding the effects in her husband's house, on the ground that the decree was against her husband and that the goods belonged to her, held that the question of ownership could not in general be determined in an action directed solely against a sheriff officer, and that the pursuer's proper remedy was to appear in the poinding. *Shirra v Wann, 22, 6.*

Form of action—Interdict without declarator—Scope of interdict action.—An action of interdict (without declarator) held a

Process: Form of Petition—continued.

competent form of process in which to try a question between two who had been copartners, whether one of them who had sold the goodwill to the other could thereafter, in trade competition with him, hold himself out to the public as the "late senior partner"—a title to which the complaining partner himself made no claim. *Observations on the scope of an action of interdict. Greig Brothers v Greig*, 22, 82.

Form of action—Penalty—Summary Jurisdiction Acts—Contravention of Plate Act, 1836.—Where a statute has imposed a penalty as a punishment for contravention of its provisions, and the penalty is to be recovered summarily, held that it can be recovered only in the Criminal Court and under the provisions of the Summary Jurisdiction Acts. Held, further, that the penalties exigible under the Plate Act of 1836 can be recovered only summarily. *Glasgow Goldsmiths' Co., v Mackenzie & Co.*, 28, 27.

Form of action—Petition signed by one agent for another.—In a petition by creditors for the sequestration of their debtor's estates the signature was "For J. W., enrolled law agent, R. E. Square, Glasgow, W. A."—W. A. being a procurator of the Court applied to, but J. W. not being such. Held that this signature sufficiently complied with the direction of sec. 21 of the Bankruptcy Act, 1856, that such a petition must be signed by the petitioner or his counsel or agent, and with the direction of rule 3 appended to the Sheriff Courts Act, 1907, that an initial writ must be signed by the pursuer or by his agent, inasmuch as J. W. was an enrolled law agent and the creditor's law agent, and his signature was exhibited by W. A., practising, in the sense of secs. 2 and 16 of the Law Agents Act, 1873, before the Court applied to. *Muir's Sequestration*, 27, 327.

II. Citation, Appearance.

Appearance—Withdrawal opposed—Whether decree in respect of no appearance or of no defences—Sheriff Courts Act, 1876, secs. 14, 15, and 16.—A defender who had entered appearance sought to withdraw it after an order had been made to lodge defences. The pursuer objected to the withdrawal. Held that the pursuer was entitled to decree "in respect of no defences." *Cuthbert v Stuart-Gray*, 21, 31.

Appearance—Adoption of notice by lodging defences.—Circumstances in which a defender was held barred by lodging defences from pleading that a notice of appearance in his name was not authorised by him. *A B v C D*, 21, 303.

Citation—Annexation of account—Sheriff Courts Act, 1907, rules 2 and 13.—Where a copy of the account sued on was not endorsed on or attached to the initial writ in terms of rule 2, the matter was held to be one of citation, and the action was held to be competent—the defender not being prejudiced by the omission, and having by appear-

Process: Citation, Appearance—continued.

ance remedied the defect in the service. *Brown & Co. v Rennie*, 29, 119.

Citation—Competency of non-summary action on summary warrant for citation.—The pursuers asked for implement of a contract of sale, or on non-implement for payment of a sum exceeding £50. The warrant for citation was in terms of Form B in the Sheriff Courts Act of 1907, but the procedure followed was that prescribed for an ordinary action. The defender appeared without lodging a notice of appearance, and pleaded that the action was incompetent because rule 4 of the Act had been violated by the use of a warrant not appropriate to an action *ad factum præstandum* and not summary. Held that the action was competent, and plea repelled. *Muir & Weir v Petrie*, 27, 151.

Citation—Competency of summary application on warrant of citation appropriate to ordinary cause.—Opinion that the issue and use of a warrant for citation in the inappropriate form would not prevent a proceeding initiated as an ordinary cause from being entertained as a “summary application,” if in the Sheriff’s opinion it truly was such an application. *Thirtle, &c. v Copin*, 29, 13.

Citation—Party gone permanently abroad—Service at house within forty days.—In an action of forthcoming in the Debts Recovery Court the arrestees argued that, as the common debtor had left the country some days (less than forty) before the original action was served upon him by hand or by post at his house, the citation should have been edictal, and was inept as it stood. Held that this citation was sufficient. *Hart v Grant & Wylie, &c.*, 23, 186.

Citation—Petition given to defender for acceptance of service and not returned—Pursuer’s right to redelivery.—A defender, to whom a petition with a warrant of citation had been sent for acceptance of service, refused to return it, with or without a docquet of acceptance. Held that the pursuer was entitled to redelivery of the petition. *Campbell v Macpherson*, 22, 88.

III. Reponing.

Reponing after absence—Unsatisfactory explanation of absence—Sheriff Courts Act, 1876, sec. 14 (2).—Circumstances in which the explanation offered by a defender of his failure to enter appearance in an action held unsatisfactory, and reponing therefore refused. *Rodger v Mackay*, 21, 29.

Reponing after absence—Partial implement—Sheriff Courts Act, 1876, sec. 14, sub-sec. 2.—Where a poinding had been executed under a decree in absence for a sum less than that in the decree, held that the decree was implemented to the extent of the poinding, and could only be recalled so far as not implemented. *M’Niven v Orr*, 22, 9.

Reponing after absence—Sheriff’s discretion—Sufficiency of explanations—Sheriff Courts Act, 1907, rule 30.—Observa-

Process: Reponing—continued.

tions on the duty of the Sheriff in disposing of a reponing note presented by a defender under rules 27 to 33 of the Sheriff Courts Act of 1907. *Thow v Thow*, 24, 329.

Reponing after absence—Sheriff's discretion—Sheriff Courts Act, 1907, rule 30.—Explanation of failure to appear held insufficient, and reponing note refused. *Logan, &c. v Miller*, 27, 25.

Reponing after absence—Expenses—Disposal of consigned sum—Sheriff Courts Act, 1907, rules 28, 31.—*Held*, a defender having been reponed, that on his ultimately failing in his defence, the pursuer (who uplifted the consigned £2) must credit the defender with it in his account of expenses, not being entitled to it as an amand. *A & Co. v B*, 27, 214.

Reponing after absence—Sheriff's discretion—Furthcoming—Arrestee.—*Held* that the arrestee in a furthcoming action is a "defender" entitled to be reponed against a decree in absence; but the Sheriff in his discretion refused to repone, as no note of the proposed defence had been served on the pursuer. *Fraser v Savings Investment Trust, Ltd.*, 28, 224.

Reponing after absence—Sheriff's discretion—Trustee for party's creditors.—Where a defender did not enter appearance, and a trustee for his creditors presented a reponing note, the Sheriff in his discretion refused the note. *Primrose, Thomson, & Co. v Crawford*, 29, 243.

Reponing after default—Failure to lodge condescendence—Prorogation—Sheriff Courts Act, 1907, rule 56.—A pursuer failed to lodge a condescendence by the time required by rule 42 of the Sheriff Courts Act of 1907. *Held* that the Sheriff had no power by rule 56 or otherwise thereafter to allow the paper to be lodged. *Davis v Blake*, 24, 276.

Reponing after default—Prorogation of time for lodging papers—Sheriff Courts Act, 1907, rule 56.—*Held* that, according to a true construction of rule 56 of schedule I. of the above Act, the Sheriff has power to extend the time for lodging a pleading, although application for such extension has not been made until after expiration of the period allowed for lodging it. *Cuthbertson & Co. v Todd*, 24, 378.

Reponing after default—Prorogation of time for lodging defences—Sheriff Courts Act, 1907, rule 56.—*Held* that the Sheriff has power to extend the time for lodging defences, and to impose conditions, although the period for lodging them has already elapsed. *Laurence v Gray*, 25, 19.

IV. Tabling, Caution, Consignation, Mandatory, Poor Roll.

Caution for expenses—Defender divesting himself late in procedure.—Where defenders, *pendente lite*, voluntarily divested themselves of their estates and wished to continue to defend, held that they were bound to find caution for expenses. *Macnaughtan, &c. v Thurman & Co.*, 24, 80.

Process: Tabling, Caution, Consignation, Mandatory, Poor Roll—continued.

Caution for expenses—Bankrupt defenders—Summary ejection.

—The purchaser of property sold under the powers contained in a bond and disposition in security granted by spouses, liferenter and fiar, brought an action for the summary ejection of the spouses, both undischarged bankrupts. Circumstances in which the fiar but not the liferenter was ordained to find caution for expenses. *Douglas v Frew, &c.*, 26, 355.

Caution for expenses—Executor-dative confirmed but bankrupt—No executry estate.

—An executor-dative, duly confirmed on finding caution as such, but without any executry estate ingathered and himself a bankrupt under decree of cessio, sued for payment of an item of the executry estate. In a defence that the item had been a donation by the deceased, the pursuer's bankruptcy was pled as a ground for his finding caution for expenses. *Held* that he must find caution *ante omnia*. *Birnie v M'Bain, &c.*, 30, 174.

Consignation—Admitted debt deposited with clerk of Court before action—Expenses.—A debtor in Portree lodged with the Sheriff-clerk in Portree, “to await the orders of Court” and before action, the admitted amount of an account claimed by an Inverness creditor, and refused to remit to the creditor direct. The creditor sued and got decree, with an order for payment of the money. *Held* that the debtor must pay expenses, as the action had been invited by him and was necessary. *Observed* that by authority and practice consignation is limited to the period during which an action is pending. *A B & Co. v C D*, 25, 106.

Falling asleep—Wakening—Competency after forty years—Intimation of motion.—*Held* that a process in which no step had been taken for sixty years could be wakened by minute. *Observations* as to necessary notices before wakening. *Barr v Wallace*, 29, 171.

Falling of instance—Failure to enrol undefended action.—*Held* that an action of sequestration for rent, in which, after the warrant to serve and inventory had been executed, no appearance was entered and no enrolment or procedure took place for over a year and day, had entirely fallen and could not be proceeded with, and that the Sheriff Courts Act of 1907 did not affect the ruling in *M'Kidd v Manson*, 1882, 9 R. 790. *Belfrage v Blyth*, 26, 295.

Falling of instance—Lis pendens—Sheriff Courts Act of 1907, rules 35 and 101.—Where an action was never tabled no procedure took place for more than a year and a day after the date for tabling. *Held* that the warrant for service was not an interlocutor in the cause, and that the action was not asleep and so could not be wakened, but that it had dropped from the roll in terms of rule 35 of the Sheriff Courts Act of 1907, and was no obstacle to the raising of a new action on the same grounds. *Robb & Crosbie v Forbes*, 27, 162.

Process : Tabling, Caution, Consignation, Mandatory, Poor Roll—continued.

Mandatory—English pursuer—*Judgments Extension Act, 1882*

—*Personal service.*—*Held* that an English pursuer in an action was not bound to sist a mandatory merely because the defenders (a limited company which could not be cited personally, but had lodged a notice of appearance and defences) had not been cited personally. *Opinion* that the limitation in the Inferior Courts Judgments Extension Act, 1882, sec. 10, applied only to defenders. *Hudson v Innes & Grieve, Ltd., 24, 190.*

Mandatory.—*Held* that an English or Irish pursuer is not bound to sist a mandatory. *M'Gildowney v Hart, 27, 37.*

Poor roll—*Probabilis Court—Statement by defender.*—*Held* that a statement made by a defender when examined in the Probabilis Court cannot be proved against him. *Jackson v Hendry, 21, 151.*

Poor roll—*Pursuer's curator not poor—Functions of reporters—Precognitions.*—After a hearing before the Sheriff-Principal on a caveat against admission to the poor roll of one held by the reporters to have a *probabilis causa* and to be entitled to the benefit of the roll, *held* (1) that the conjunction of the pursuer's father's name with hers in the instance as her curator—he having 38s. a week wages—did not disqualify her, the proper pursuer; and (2) that the reporters, who saw and heard the applicant, were not bound to obtain recognitions from her, such as might be shown to the defender—the provision of rule 163 being in general terms. *M'Gregor v Kinloch, 30, 282.*

Poor roll—*Litigant's liability for haver's fees.*—Though the agent for a pauper litigant is, under rule 167 annexed to the Sheriff Courts Act of 1907, not liable for the fees and expenses of a witness unless he recovers them, the litigant himself is bound to pay the reasonable charges of a haver cited for him, if demanded, before the haver need appear, produce, or depone. *Dickson v Taylor, &c., 30, 338.*

Tabling—Agent's absence—Defender's remedy.—In a defended action the pursuer's agent handed the process to the Sheriff-clerk, sitting in the Court-room on the day for tabling the case, but before the Sheriff had taken his seat. He was not present at the time for calling new cases. The defender's agent craved decree of absolvitor, which was granted. An interlocutor was, however, issued ordering defences, and this interlocutor was, by leave, appealed to the Sheriff-Principal. *Held* that the cause was not tabled, in the absence of the agent from the Court. *Observed* that not absolvitor but protestation was the defender's remedy in the circumstances. *Higgins v Atkinson, 24, 385.*

Tabling—Procedure after arrestment on dependence—*Sheriff Courts Act, 1907, rule 127.*—It is enacted that, after arrestment on the dependence of an action, service must follow

Process: Tabling, Caution, Consignation, Mandatory, Poor Roll—*continued.*

the arrestment within seven days, and “ tabling ” of the action must follow the service within fourteen days, otherwise the arrestment falls. *Held* that tabling was incompetent in an undefended cause by virtue of the rules applicable thereto, but *opinion* that an arrestment did not fall for want of tabling in such an action. *Raimes, Clark, & Co., Ltd. v Glass*, 25, 309.

Tabling—Procedure after arrestment on dependence.—Opinions as to the due tabling on 20th August (in vacation) of a case in which arrestments on the dependence were used on 17th July, and service was effected on 23rd July. *Johnson v Johnson*, 26, 134.

V. Production, Inspection.

Production—Recovery of documents on open record—Bankers' Books Evidence Act, 1879, sec. 7.—An order to inspect and take copies from the books of a bank, not party to a pending action, granted on an *ex parte* application made before the closing of the record in an action. *Burrows, Petitioner*, 21, 215.

Production—Recovery of documents on open record—Sheriff Courts Act, 1907, rules 47 and 48.—*Held* that the rule entitling a party to diligence for recovery before the record is closed applies only to documents founded upon in the pleadings of the other party. *Wright v Valentine*, 26, 26, 151.

Production—Recovery of documents on open record—Obligation of party founding on document—Sheriff Courts Act, 1907, rules 47 and 48.—A defender, whose whole defence depended on a document which he said was not in his custody or power, was required by the pursuer to lodge it in process before the closing of the record. It was in his father's hands, but he did not say he had asked him for it. On an indication by the Court that the defence would be repelled as irrelevant failing production, the defender craved diligence for recovery. In granting it, *observations* on the meaning and effect of rules 47 and 48 annexed to the Sheriff Courts Act of 1907. *Cameron, &c. v Ferrier*, 29, 125.

VI. Pleading, Amendment, Sisting Party.

Pleading—Amending instance by adding consent of assignor.—*Held* that it was incompetent to amend the instance of a petition for payment of money by adding the name of the true *dominus litis* as a consenting pursuer, or by describing the original pursuers as his assignees, there having been no assignation prior to the action being raised. *Invergordon Auction Co., Ltd. v Macmillan*, 24, 187.

Pleading—Amendment of instance—Adding defenders—Sheriff Courts Act, 1907, rule 79.—*Held* that the power of adding new parties as defenders is to be exercised only when that

Process: Pleading, Amendment, Sisting Party—continued.

is necessary in order to determine the real controversy between the parties. Motion to amend by adding new defenders refused. *Caven v Provost, &c., of Dalbeattie, &c.,* 25, 109.

Pleading—Amendment of prayer—Lump sum of damages claimed on different grounds.—Where a pursuer claimed £100 as the total (without specification of amounts) of (1) damages and solatium for illness caused by defective drains, and of doctor's, chemist's, and nurse's bills attributable to fault of the defender, landlady of the furnished house which he occupied; and of (2) expenses of removal to another house arising from breach by the defender of the contract of lease, and all the heads of damage were held irrelevant except the expenses of removal, the whole action was dismissed. *Fischer v Mitchell,* 22, 3.

Pleading—Amendment of prayer—New craves.—Where the pursuer of an action for repayment of premiums disbursed by him for the upkeep of a policy sought to add to his petition cravings for delivery of the policy and for payment of its contents, held that the additions could not be allowed, as they were not amendment within the meaning of rule 79 annexed to the Sheriff Courts Act of 1907. *Ford v Ford,* 28, 226.

Pleading—Amendment of prayer—Interdict.—In an action for interdict leave to amend refused, where the proposed amendment was so wide an enlargement of the original crave as substantially to be a new case, the pursuers' proper course being to abandon. *Watt Brothers v Cormack, &c.,* 29, 242.

Pleading—Amendment of prayer—Accounting including legitim.—An action by certain children against a brother, who was sole legatee of the estate of their mother, who was sole legatee of the estate of their father, craved an accounting and payment of one-seventh to each pursuer out of the father's estate and legitim out of the mother's estate. Held that this crave could be interpreted so as to permit decree for legitim out of the father's estate, which had not been demanded by the pursuers on his death. *Elliot, &c. v Elliot,* 30, 10.

Pleading—Amendment of record—Striking out irrelevant matter. Circumstances in which a pursuer was ordered to delete certain articles of his condescendence as being "irrelevant and unnecessary matter." *Robertson v Smith,* 21, 100.

Pleading—Amendment of record—Adjustments written on certified copy summons and initialed by agent—Act of Sederunt, 1839, sec. 45.—The pursuer printed the record as it appeared from the principal summons and defences. The adjustments made by the pursuer at the closing of the record had been written upon the certified copy summons and initialed by his agent according to local practice. The First

Process: Pleading, Amendment, Sisting Party—continued.

Division remitted the case back to the Sheriff, and allowed both parties to adjust anew. Kilcoyne v Wilson, 23, 12.

Pleading—Amendment of record—New defence—Summary cause.—*Held* that, where a defender has misstated his defence, the Sheriff may allow a new defence to be substituted for it upon such conditions as he thinks fit. *M'Lelland v Mackay, 24, 157.*

Pleading—Amendment of record—Striking out irrelevant matter.—*Opinion* that it was competent to strike out irrelevant matter from a condescendence. *Kennan v Stranraer Creamery Co., 24, 326.*

Pleading—Amendment of record—Vague averments—Relevancy—Claim for damages at common law or under Employers' Liability Act.—*Held* that an action laid at common law and under the Employers' Liability Act of 1880 was not relevantly laid where the record did not clearly set forth the grounds of action under each of these heads, and action dismissed when amendment not desired. *M'Grath v Glasgow Coal Co., Ltd. 25, 163.*

Pleading—Amendment of record—Expenses.—Where a party has been allowed to amend the record, any conditions as to expenses should be specified in the interlocutor allowing the amendment, or room for their subsequent imposition be reserved. *Nelson v Wilson & Sons, 29, 90.*

Pleading—Amendment of record on appeal—Further proof depending on amendment—Sheriff Courts Acts of 1907-1913, sec. 28, and rule 79.—In an appeal to the Sheriff Principal, where the powers again conferred by the Sheriff Courts Act of 1913, and contained in sec. 28 of the Act, were not available, *held* that amendments of the record proposed after judgment by the Sheriff-Substitute would not affect the determination of the real question in controversy, and amendment refused as not falling under rule 79, with the result that further proof craved was *held* incompetent, and the decision appealed against was *affirmed*. *Gairdner v Macarthur, 30, 179.*

Pleading—Amendment—Workmen's compensation memorandum.—Applicants for a warrant to record a memorandum of a workman's compensation, which was objected to as not genuine, *allowed* to amend the memorandum under rule 79 appended to the Sheriff Courts Act, 1907. *Campbell v Glasgow, Barrhead, and Kilmarnock Joint Railway Co., 25, 299.*

Pleading—Conjunction of ordinary with summary cause.—Where a summary cause (for not more than £50) had been conjoined with a cross action for more, *opinion* that they should have been kept separate but concurrent; and when judgment given actions *disjoined*, but leave granted to appeal the summary cause, to keep them concurrent. *M'Donald v M'Donald, 29, 157.*

Process: Pleading, Amendment, Sisting Party—continued.

Pleading—Counter claim—Right of relief stated by way of defence.—*Held* that a party who had been held liable under the Workmen's Compensation Act for a payment to a workman, not his servant, although injured in the execution of his work, might competently set off his claim of relief in an action against him by the party truly liable for the workman's compensation. *Clyde Salvage Co., Ltd., &c. v Good & MacKinnon*, 25, 61.

Pleading—Counter claim—Connection with principal claim—Sheriff Courts (Scotland) Act, 1907, rule 55.—*Held* competent, in an action for the price of goods sold, to counter claim in the defences for loss in respect of the late delivery of other goods previously purchased. *Hinchcliffe & Co. v Binning*, 26, 181.

Pleading—Counter claim—Want of specification—Relevancy under mutual contract—Form of stating counter claim.—Circumstances in which a vague counter claim upon breach of contract *held* not to be a relevant defence to a claim for the price admittedly due under the contract. *Opinion* that a counter claim should be set forth in a separate statement of facts, and not in answers. *Smith, Roberts, & Co., Ltd. v Inshaw Seamless Iron and Steel Tubes, Ltd.*, 25, 301.

Pleading—Counter claim lacking details—Damages against price in sale—Sheriff Courts Act, 1907, rule 55.—Where a seller sued for the balance of the price of the subjects sold, and the purchaser admitted it was owing, but pleaded that he had been fraudulently misled as to the value of the subjects, and claimed damages, and to retain the balance of the price in part satisfaction of his claim, and the claim was deficient in specification of details, *held* that the seller was entitled to decree *de plano*. *Observed* that a counter claim is, under rule 55, just to be dealt with as if it were a substantive action. *Clingan's Trustees v M'Kinnon*, 28, 35.

Pleading—Counter claim—Liquid and illiquid—Damages on separate contract against admitted debt.—The pursuers' claim for the price of goods sold and delivered was admitted by the defender, but he counter claimed in his defences for damages of a less amount in respect of breach of a later contract of sale between the parties. Defence *held* irrelevant, and *observations* on the 55th rule annexed to the Sheriff Courts Act, 1907. *Aarons & Co. v Macdonald*, 29, 315.

Pleading—Petition—Annexation of account.—The annexation of the account, where such is sued on, being no longer required by statute, *held* that an action need not be dismissed wherein the condescendence stated erroneously that an account was annexed to the petition. *Macfarlane & Co. v Gatehouse Magistrates*, 30, 62.

Pleading—Summary application—Competency of condescendence and answers.—An application for the award of

Process: Pleading, Amendment, Sisting Party—continued

compensation under the Workmen's Compensation Act, 1906, held to be a "summary application" under sec. 50 of the Sheriff Courts Act, 1907, so that the ordering of a condenscence and answers was incompetent. Observed that the application, though an "action" and opposed, and though not a "summary cause" as defined by sec. 3 (i) of the Act, was not in the category of "other defended causes" in the sense of rule 42. *Maclean, &c. v Bullough*, 27, 264.

Pleading—Summary cause—Condescendence.—When in a summary cause a condenscence had been lodged, held that the averments in the condenscence superseded the short statement of the nature of the claim given in the initial writ. *Nelson v Wilson & Sons*, 29, 90.

Sisting party—Minor defender—Curator not called.—Where a defender averred that he was a minor, and pled that the action should be dismissed because his curator (his father) had not been called, held that the pursuer was entitled to an order for intimation to the father, failing whose appearance, by sisting himself, a curator *ad litem* might be moved for. *M'Dowall, &c. v Carson*, 24, 72.

Sisting party—Assignee of pursuer—Sheriff's discretion.—Where a pursuer, under order to sist a mandatory, assigned her whole claim, an order sisting the assignee in place of the pursuer was refused till the first order should be implemented, as the assignee, if so sisted, might proceed with the action, which the cedent could not. *Harvey v Clark, &c.*, 28, 75.

VII. Remit, Proof.

Proof—Collateral facts—Testing character and credibility of witnesses—Rebutting evidence.—Whilst questions which go to character and credibility are permissible in cross, the cross-examiner may not lead rebutting evidence when the question is one directed to collateral facts. The case may be different if the pursuer raises the collateral issue in the evidence in chief. *A v B*, 28, 113.

Proof—Commission to take evidence of foreign pursuer—Sheriff Courts Act, 1853, sec. 10.—A commission to take the evidence of a pursuer who is resident abroad and unable to attend the proof may competently be granted at the diet of proof. Such a commission should be in the form of joint interrogatories. *Lyell, &c. v Harthill Thistle Pipe Band, &c.*, 21, 294.

Proof—Jury trial—Appeal.—Held that the Sheriff-Suhstitute's interlocutor setting forth the questions to be proponed to the jury is not at that stage appealable, either to the Sheriff or to the Court of Session, but that error in stating the questions is misdirection of the jury, grounding an ultimate appeal to the Court of Session. Observed (1) that the scheme of jury trial in the Sheriff Court does not permit of

Process: Remit, Proof—continued.

any appeal, at any stage after the case has become a jury cause, from the Sheriff-Substitute to the Sheriff; (2) that the only competent appeal to the Court of Session is under sec. 31 against the final interlocutor applying the jury's verdict; (3) that interlocutory appeal is incompetent; (4) that the Sheriff-Substitute has no discretion as regards the findings in fact, but must in his final interlocutor state them as found by the jury; (5) that to elicit the facts the questions to the jury ought to be special, not general; (6) that the sole responsibility of stating the questions rests with the Sheriff-Substitute; (7) that expenses in a jury trial must follow the judgment; and (8) that the Sheriff-Substitute has no power to comment on the jury's verdict, but must accept it and apply the law to the facts as found by the jury. *Observations of Court of Session judges on jury trial under the Sheriff Courts Act, 1907. M'Vicar v Robertson & Son, 26, 3, 70.*

Proof—Order of examination of witnesses—Defender as first witness for pursuer.—Held that it was competent for the pursuer of an action for affiliation and aliment to call the defender as her first witness. *Observations* on the occasional necessity of this practice, and *opinion* that the Court cannot interfere with an agent's discretion as to the order in which he may call witnesses. *Mackay v Munn, 25, 369.*

Proof—Order of examination of witnesses—Defender as first witness for pursuer.—Held that it was competent for the pursuer of an action of affiliation and aliment to call the defender as her first witness. *Observations* on the practice of so proceeding. *Geddes v Ingram, 26, 188.*

Proof—Pleadings and productions.—These held sufficient for disposal of a cause without further probation. The Congested Districts (Scotland) Commissioners v MacInnes, &c., 26, 343.

Proof—Proving the tenor.—In the absence of directions in the Sheriff Courts Act, 1907-13, as to procedure in an action for proving the tenor, proof allowed where nobody appeared to oppose the crave. Stewart v Macdougall, &c., 30, 327.

Proof—Separation and aliment.—Held that, before decree in absence can be given in an action for separation and aliment in the Sheriff Court, the pursuer must "substantiate" by sufficient evidence her grounds of action. *Questions* whether a condescendence, &c., is necessary, and whether an appeal is competent. *Grant v Grant, 24, 114.*

VIII. Appeal.

Abandonment of appeal to Court of Session—Subsequent appeal to Sheriff—Sheriff Courts Act, 1907, rule 96—Acts of Sederunt of 10th March, 1870, and 5th January, 1909.—A party, having appealed to the Court of Session against an interlocutor of the Sheriff-Substitute, failed to print the

Process: Appeal—continued.

note of appeal, record, &c., or to obtain an interlocutor dispensing with printing, within the time prescribed by the Acts of Sederunt of 10th March, 1870, and 5th January, 1909, and the process was re-transmitted in respect of the implied abandonment of the appeal. Prior to the re-transmission of the process the same party had appealed to the Sheriff-Principal. *Held* that by abandonment of the first appeal the judgment appealed against had become final, and therefore that the second appeal was incompetent. *Clark v Comrie*, 26, 205.

Additional evidence—Competency—Sheriff Courts Act, 1907.—*Held* incompetent for the Sheriff-Principal, on appeal to him, to allow additional proof. *Cobb v Thomson*, 25, 263.

Additional evidence—Competency—Sheriff Courts Act, 1907.—*Held* incompetent for the Sheriff to allow additional proof after the proof was closed. *M'William v Robertson*, 27, 219.

Decerniture for expenses—Motion for decree in name of agent-disburser.—Appeal against an interlocutor of the Sheriff-Substitute, approving of the Auditor's report, and refusing a motion for decree in name of the agent-disburser, *held* incompetent. *Carson v M'Dowall, &c.*, 24, 324.

Decerniture for expenses.—On an appeal being taken by leave of the Sheriff-Substitute against his decerniture, in terms of rule 100 of the Sheriff Courts Act of 1907, for expenses, the Sheriff-Principal varied the findings, neither party having objected to the competency of the appeal. *Dalton & Co. v Boyle & Co.*, 26, 53.

Decerniture for expenses.—*Held* incompetent to appeal to the Sheriff-Principal from the Sheriff-Substitute on a decerniture for taxed expenses. *M'Kinstry v Plean Colliery Co., Ltd.*, 27, 62.

Ejection—Agricultural Holdings Act, 1908, sec. 30.—*Held* that sec. 30 of the Agricultural Holdings (Scotland) Act, 1908, did not prohibit an appeal from the Sheriff-Substitute to the Sheriff-Principal in an action of ejection. *Cameron, &c. v Ferrier*, 28, 220.

Incompetent judgment.—*Held* that an incompetent judgment of a Sheriff-Substitute may be set aside by appeal to the Sheriff-Principal. *Observations* on the subject of appeal subsequent to the Sheriff Courts Act of 1907. *Archer's Trustees v Alexander & Sons*, 27, 11.

Interlocutor approving specification of documents to be recovered.—*Held* incompetent to appeal without leave against an interlocutor of a Sheriff-Substitute granting diligence against havers for recovery of documents contained in a specification, assigning a diet for recovery, and granting a commission therefor. *Baikie, &c. v Doull*, 24, 211.

Process: Appeal—continued.

Interlocutor refusing diligence for recovery of documents.—

Where the pursuer asked for a diligence for the recovery of documents according to a specification, and it was refused by the Sheriff-Substitute as regards part of the specification, *Held* that an appeal to the Sheriff was incompetent. *Dick v Town Council of Blairgowrie*, 27, 243.

Scope of review.—Where an interlocutor has been pronounced allowing a proof and also dealing with other matters, if appeal be taken, the deliverance as to any of these other matters can be brought under review, although the allowance of proof is not itself challenged. *Nelson v Wilson & Sons*, 29, 90.

Summary application—Conversion of Small Debt action.—Circumstances in which, by consent of parties, a Small Debt action was treated as a “summary application” under sec. 164 of the Public Health Act, 1897, and it was appealed to the Sheriff-Principal. *Craig v Lorn District Committee of Argyll County Council*, 28, 14.

Summary application for statutory compensation.—*Held* that an appeal against an interlocutor of the Sheriff-Substitute, allowing proof before answer in a summary application under sec. 164 of the Public Health Act of 1897, was competent, reading together the terms of that section and those of secs. 27 (d) and 28 (e) of the Sheriff Courts Act, 1907. *Veitch v Crieff Local Authority*, 28, 264.

Transfer to another sheriffdom—Sheriff Courts Act, 1907, rule 19.—*Held* that an interlocutor by a Sheriff-Substitute transferring a cause to another sheriffdom under rule 19 was, on leave given, appealable to the Sheriff. *Lamb & Co. v Pearson, &c.*, 28, 80.

Value of cause.—When the parties were not in agreement as to the meaning of “the value of the cause” for the purposes of appeal, the Sheriff, without determining the point, gave alternative findings in fact. *Macfarlane v Perth Branch (No. 2155) of the Locomotive Steam Enginemen and Firemen's Friendly Society*, 27, 223.

IX. Abandonment.

Expenses unpaid—Motion for absolvitor.—*Held* that where a pursuer seeks to abandon his case, but fails to pay expenses as a condition precedent to his getting leave to abandon, the defender's remedy is not a motion for absolvitor. *A v B*, 22, 108.

Expenses unpaid—Counter claim, insisting in—Sheriff Courts Act, 1907, rules 81 and 55.—The defence to an ordinary action for payment included a counter claim, not separated from the pleading in defence. The pursuer abandoned his action, and failed to pay expenses. *Held* that the abandonment did not entitle the defender either to have her counter

Process : Abandonment—continued.

claim sustained *de plano*, or, in the state of the pleadings, to proceed to establish her counter claim, but that she must simply be assuited, with expenses, in terms of rule 81 of the Sheriff Courts Act of 1907. *Craw v Malcolm*, 24, 268.

Expenses—Sheriff's powers and duties.—*Held* that when a pursuer abandons his action (1) it is the duty of the Court to fix the amount of the defender's expenses, payment of which is a condition of abandonment being allowed, and, accordingly, that objections to the Auditor's report are competent; but (2) the Court cannot decree for payment to the defender of the amount of expenses so fixed. *Buchanan & French, Ltd. v Watson*, 26, 246.

X. Decree.

Decree—Agent-disburser—Notice of motion for decerniture in agent's name.—*Held* an established rule of procedure that, when due notice has been given of motion to approve of the Auditor's report on a judicial account of expenses, decree may be sought in name of the agent-disburser without notice. *Rorie v Macpherson*, 26, 232.

Decree in absence—Continuation for fixed period—During period motion for decree.—In a summary cause the defender was duly cited to appear, but did not appear. At the diet appointed for his appearance the case was called, and was then continued to a fixed date on the pursuers' motion. Pending the arrival of that date the defender granted a trust deed. The pursuers then enrolled the case for decree and intimated this to the defender, who did not appear at the diet for hearing the motion. *Held* competent to grant before the fixed date the decree sought. *Campbell & Henry v Hunter*, 27, 26.

Production. See PROCESS V., STAMP.

Promise.

Unilateral obligation—Rejection—Subsequent claim for fulfilment—Written offer to aliment bastard.—The mother of a bastard child received from a man a letter acknowledging that he had had connection with her such as might account for the birth of her child, and saying that he was willing to pay aliment. She had already raised an action of filiation against another man in respect of the child. After receiving the letter she continued that action, and it was decided against her. *Held* that she had rejected the promise of the writer of the letter, and could not maintain another action against him as being the father. *Rankin v Hutchison*, 23, 291.

Proof. See BANKRUPTCY II., IV. (b), BASTARD I., BILL OF EXCHANGE, EVIDENCE, LOAN, PRESCRIPTION I., II., PROCESS VII., ROAD I., WRIT.

Property. *See also Arrestment III., Assessment, Common Property, Deposit, Franchise, Hiring II., IV., Husband and Wife II., Jurisdiction, Nuisance, Police, Public Health, Reparation II., Sale I., II. (b), III.*

Exclusive right—Common passage—Indefinite boundary.—Two properties were described as bounded by each other, and on or about the mutual boundary was a passage. The pursuer sought declarator that this was common property of the two owners, in order that she might prevent the defender from relaying a drain beneath it; and only averred forty years' possession of the passage as an access, hers exclusively or in common with the defender. Applying the maxim, *tantum præscriptum quantum possessum*, held that the averment was irrelevant to support a claim of or inferring property in her. *Sutherland v Maclennan, &c.*, 25, 93.

Exclusive right—Trespass—Entry without compensation—Glasgow Corporation and Police Act, 1895, sec. 30.—Held that the Corporation of Glasgow were not entitled, by virtue of the powers conferred by sec. 30 of the above Act, to enter upon private property for the purpose of erecting thereon telegraph poles to carry wires over or within such property in connection with their fire department, without compensation. *North British Railway Co. v Corporation of Glasgow*, 25, 206.

Exclusive right—Trespass—Golf balls and seekers invading field—Reparation.—Where the tenant of agricultural land adjoining a golf course suffered loss to his potato crop by golf balls, followed by their owners and others, coming into it, and it appeared that the tenants of the golf course took no precautions against this obvious incident of the game, held that the latter must pay damages to him. *Ritchie v Dysart Golf Club*, 26, 30.

Exclusive right—Trespass—Ejection of squatters—Congested Districts Commission.—A property, acquired and held by the Commissioners under the Congested Districts (Scotland) Act, 1897, was at their entry found partly in possession of invaders, who had no title from the Commissioners' authors or otherwise. In an action for their ejection, warrant for their ejection and interdict against their again trespassing granted. Opinion as to the distinction between summary ejections and summary removings, and the warrant and procedure therein (Sheriff Courts Act, 1907). Opinion on the powers of the Commissioners to hold, &c., heritable property. *Congested Districts Commissioners v Gillies, &c.*, 26, 191.

Exclusive right—Trespass—Railway station—Removal of trespasser by force.—Held that a railway company removing, with no more than the necessary force, one who entered upon a station platform and had no intention of travelling and no platform permit, was not liable in damages as for assault. *Byars v Caledonian Railway Co.*, 27, 50.

March ditch—Cost of necessary repairs.—Opposite riparian owners, whose properties are bounded by a march ditch,

Property—continued.

are bound to concur in the repairs and cleaning necessary to make the ditch sufficient for the purpose of carrying off the water draining into it, and are liable to contribute to the cost of such necessary repairs and cleaning. *Maclean v Burton-Mackenzie's Trustees*, 29, 334.

March fence—Action for half cost of repair—Necessity of application to Sheriff before repairing.—*Held* incumbent on a proprietor to call his neighbouring proprietor in a process before the judge ordinary prior to entering upon the work of repairing a march fence, and mere notice of his intention to do the work gives him no right to reimbursement of half the cost. *Duncan v Ramsay*, 23, 181.

March fence—Glebe—Liability for maintenance.—*Held* that a parish minister is the owner of his glebe to the effect that he is bound to erect and maintain the fences along the marches of the glebe, conjointly with the neighbouring proprietors, when called upon to do so by any of them. *M'Douall v Lowrie*, 22, 66.

March fence—Glebe—Liability for maintenance.—*Held* that the minister, and not the heritors, is liable, in a question with the conterminous landowner, for half the cost of repairing the march fences of the glebe. *M'Douall v Lowrie*, 24, 331.

March fence—Upkeep of servitude gate.—The owners of a property had right to a servitude of way over an adjoining property, access to which was by a gate in the march fence between the properties. *Held* that they alone must maintain the gate, where the obligation on the other proprietors was merely to pay half the expense of maintaining the march fence. *Johnston-Ferguson, &c. v Gass, &c.*, 29, 231.

Neighbourhood—Injury to others by protecting one's land—Reparation.—In a flood A not only dammed back the water on his property but also diverted it by special operations into the manhole of a sewer, that it might be carried off. As the result the sewer, which was partly unformed, burst, which caused damage to it and its owner B. *Held* that A committed a wrongful act and was liable to compensate B. *Clark v MacIntyre*, 27, 229.

Neighbourhood—Excessive stock of ground game—Damage to tenant on adjoining estate.—*Held* that a tenant farmer had no claim against a neighbouring proprietor for damage by rabbits from the proprietor's covers, which were alleged to be overstocked. *Marshall v Moncreiffe*, 28, 343.

Possession—Croft—Brevi manu interference with another's building.—A crofter erected on ground which he believed to be within the bounds of his croft part of the walls of a barn. Certain neighbours, who for some time had observed the erection, combined in demolishing it, and as justification alleged that an access to their crofts had been designed

Property—continued.

across the ground occupied by the barn walls, and that they acted for the landlord, who was entitled to demolish *brevi manu*. Held that the interference was unjustified, and damages allowed to the crofter. *MacCuish v Munro*, 21, 7.

Possession—Violent profits—Measure of violent profits in burgh.

—Two younger children of a proprietor of heritage maintained against his eldest son that his will was valid, but the eldest son prevailed in the suit. He thereafter raised an action for ejecting them from the heritage, which they defended on similar grounds, and they had to find caution for violent profits, but he again prevailed. In an action against them and the cautioner for payment of violent profits, held (1) that, there being *mala fides*, they were jointly and severally liable; (2) that violent profits ran from the expiry of a formal notice to remove prior to the action for ejection; and (3) that double the rent of the subjects actually occupied was the measure of the violent profits. Circumstances inferring *mala fides*. *Macdonald v Macdonald, &c.*, 22, 11.

Restrictions—Building condition—Title and interest of co-disposee to interdict.—A proprietor feued a piece of ground to A, a builder, by feu contract, which contained certain restrictions as to buildings, &c., applicable to the whole ground feued, and an obligation to insert these restrictions in all future deeds of transmission. A divided the ground into plots, erected dwelling-houses thereon, and sold them. The conveyances granted by A to the purchasers each contained a clause by which the restrictions in the feu contract were imported thereinto by reference. B, the purchaser of one of the plots, proceeded, with the superior's consent, to erect a wooden building on his back ground, and C, the purchaser of another of the plots, sought to interdict him. Held (1) that the building in question was a contravention of the restrictions in B's title, and (2) that C had a title and, in respect of the mutuality, an interest to insist on the observance of the restriction. *Robertson's Trustees v Downie*, 30, 185.
Support—Superior heritor's defective structure—Injury by inferior heritor's operation in suo—Reparation.—Land belonging to A adjoined land belonging to B. The ground sloped down from A's to B's land, and A had raised a plateau of earth behind a wall, on his own side of it. The wall was defective in structure. B excavated on his ground to within 3 feet 6 inches of the line of the wall. The plateau and wall showed damage. Held that the manner in which B's operations were conducted was not proved to be of such a nature as to cause the damage, and opinion that, without his fault or misconduct, B was not liable for injury done to the inefficient wall by his legitimate operations *in suo*. *M'Michael v Armstrong*, 25, 12.

Public Authorities Protection Act, 1893. See EXPENSES II., POLICE III., PRESCRIPTION III., PUBLIC HEALTH, REPARATION I.

Public Health. *See also ASSESSMENT I., EXPENSES I., POLICE III., REPARATION IV., TITLE TO SUE.*

Appeal—Order by sanitary inspector.—*Held* that an order by a burgh sanitary inspector, appointed by and acting for the burgh commissioners, is an order of the commissioners, and may be appealed against by virtue of sec. 339 of the Burgh Police Act of 1892. *Irons v Leith Sanitary Inspector*, 23, 342.

Cleansing—“Owner” of property in burgh—Liability of owner of adjoining shop to clean common stair.—*Held* that the owner of a shop in a tenement, with right of access to the roof by a common stair for the purpose only of sweeping vents, was not liable for the cleansing of the common stair bounded by the walls of the shop, but affording no entry to the shop. *Irons v Leith Sanitary Inspector*, 23, 342.

Closing order—Uninhabitable house—Housing Act of 1909, sec. 17 (2)—Procedure.—A local authority pronounced, by virtue of the Housing, &c., Act of 1909, sec. 17 (2), an order for closing certain houses in burgh as “so dangerous or injurious to health as to be unfit for human habitation,” but did not specify which of these grounds was founded on, or on what representation or information the order was made, and refused further specification, as well as a condescension of alterations and repairs required, which appeared to be the object of the order. On appeal the order was *quashed*, with expenses on the higher grade, as the local authority had not complied with the statute in procedure. *Summerlee Iron Co., Ltd. v Musselburgh Town Council*, 26, 334.

Closing order—Uninhabitable houses not contiguous—Notice to owner.—In an appeal against an order by a local authority for the closing of twenty-six dwellings in two blocks at some distance from each other, *held* that the order must be quashed, as it *ex facie* applied to one dwelling. *Held* also that the order was inept, because notice had not been served on the landlord of the appellants as the “owner,” in terms of secs. 17 (3) and 49 (2) of the Housing Act of 1909. *United Collieries, Ltd. v Midlothian County Council*, 28, 329.

Closing order—Appeal—Competency—Supervenient legislation allowing review.—A local authority under the Public Health Acts pronounced, by virtue of a local Act, an order closing certain house property. The Act neither allowed nor forbade appeal, but a later general public statute, in force at the date of the order, gave right to appeal to the Sheriff in similar cases. The owner did not suspend or try to appeal, but, later, sued the local authority, by appeal to the Sheriff under the Housing Act of 1909, for revocation of the closing order. *Held* by the Sheriff-Substitute that the local authority could not evade the right of appeal by selecting the local Act, but by the Sheriff-Principal that it could, sustaining pleas of

Public Health—continued.

“no jurisdiction” and “incompetence.” *Sharp v Provost, &c., of Edinburgh*, 29, 131.

Closing order—Owner of dwelling-house—Notice—Mortgagee.—

Under the Housing, Town Planning, &c., Act, 1909, a local authority issued orders closing certain dwelling-houses as unfit for human habitation. Notice was given only to the “proprietor” appearing on the valuation roll. *Held* (1) that a creditor in possession of the property under a decree of maills and duties was an “owner” under sec. 49 (2) of the Act; and (2) that notice of the closing order required to be served on him under sec. 17 (3) of the Act. *Agnew v Middle Ward District Committee of Lanarkshire*, 29, 275.

Food—Margarine unlabelled—Analyst’s certificate.—*Held* that a complaint alleging exposure of margarine unlabelled, in contravention of sec. 6 of the Margarine Act of 1887, need not be accompanied by an analyst’s certificate. *Wilson v Thomson*, 22, 99.
Food—Adulterated cream—Injuriousness of mixture—Food and Drugs Act, 1899, sec. 1 (1) and (7).—In a complaint that imported canned cream was adulterated with gelatine, and that the cans or packages were not marked with a name or description indicating that the cream had been so treated, *held* that, in absence of an averment that the mixture affected injuriously the quality, substance, or nature of the cream, the complaint was irrelevant. *Bates v Laird & Sons*, 22, 101.
Food—Adulterated milk—Sale—Taking of samples by complainant at delivery—Relevancy—Act of 1879, sec. 3.—A complaint by an officer of a local authority bore that he had taken samples of milk in course of and at the place of delivery by the seller to the purchaser, and that the accused seller of the milk “did thus,” at that place, within the meaning of sec. 3 of the Act of 1879, “sell to the complainant, to his prejudice, said sample of milk, the same not being of the nature, substance, and quality demanded, namely, sweet milk,” because it did not come up to the standard of having 3 per cent. of milk fat. Complaint dismissed as irrelevant, the sale averred having been to the purchaser, and not, even constructively, to the officer. *Question*, whether a statement in the complaint that the sample contained only so much per cent. of a particular constituent “or thereby” was sufficient. *Cumming v M’Ewen*, 22, 104.
Food—Unsound fruit—Compensation for destruction—Legal expenses of resisting condemnation order.—*Held* that the expenses incurred to his law agent by a party whose goods had been seized as unsound and unfit for human food, in defending himself and resisting an application for a condemnation order under the Public Health Act of 1897, fell within the expression “compensation” in sec. 164 of the Act. *Blyth v Magistrates, &c., of Edinburgh*, 22, 126.

Public Health—continued.

Food—Diseased animal—Compensation for destruction—Owner's acquiescence—Rearing up failed charge in abatement of compensation—Public Health Act, 1897, secs. 164 and 166.—A cow about to be sold for human food was seized by the local health authority as diseased, and, with the owner's consent, was destroyed. The authority prosecuted him under the Public Health Act, but the complaint was dismissed. He sued for the statutory compensation. *Held* that the authority could not now prove the statutory offence in mitigation of compensation, that the action was not too late, being for compensation and not for damages, and that the pursuer's consent to the destruction did not deprive him of his right to statutory compensation. *Thomson v Local Authority of Edinburgh*, 25, 73.

Food—Diseased animal—Compensation for destruction—Carcase irregularly condemned by magistrate—Remedy—Public Health Act, 1897, secs. 43, 154, and 164.—Held that the order of a magistrate for the destruction of the carcase of an animal alleged to be unsound, if regularly pronounced, was final upon the question of unsoundness, and that, in a case where the magistrate ordered the destruction of the carcase without the judicial procedure prescribed by sec. 154 of the Act, he acted outwith the provisions of the statute, and, whatever other remedy might be open to the owner, he could not claim statutory compensation in respect of damage by exercise of the powers of the Act. *Veitch v Crieff Local Authority*, 28, 264.

*Infectious diseases prevention—Milk supply—Compensation for stopping sale—Public Health Act, 1897, secs. 60, 164, 166.—On the appearance of infectious disease at a dairy farm the farmer's doctor, and immediately afterwards the medical officer of the public health local authority, advised the farmer to sell no more milk for a definite time, and the farmer suspended his sales for that time without a formal order to that effect. He claimed compensation under sec. 164 of the statute, but the local authority refused it in the absence of the order and on other grounds, and he sued for it. *Held* that he was entitled to it, and compensation distinguished from damages under sec. 16. *Craig v Lorn District Committee of Argyll County Council*, 28, 14.*

*Infectious diseases prevention—Milk supply—Closing dairy irregularly—Limitation of action against authority.—In an action for damages against the clerk to a local health authority, who had, as instructed by it, written to a dairyman's customer to stop receiving milk from him, but in a way not authorised by sec. 60 of the Public Health Act of 1897, held that the authority and its clerk were not protected by sec. 166 of the Act from action later than two months after its cause, not having proceeded under the Act. *Oatman v Leslie*, 29, 317.*

Lighting district—Resolution to enlarge—Appeal—Local Government Act, 1894, sec. 44, sub-secs. (2) and (5)—Public

Public Health—continued.

Health Act, 1897, sec. 38.—A district committee having resolved to enlarge an existing special lighting district, a railway company, part of whose lands fell within the proposed enlarged district, appealed to the Sheriff against the resolution; appeal held competent. *Glasgow and South-Western and Caledonian Railway Companies v Renfrew Lower District Committee, 23, 44.*

Lighting district—Resolution to form—Appeal—Expenses.—*Held* that expenses of an appeal to the Sheriff against the resolution of a district committee to form a special district can only be awarded, if at all, in very special circumstances. *Lornie, &c. v Highland District Committee of Perthshire, 25, 124.*

Lighting district—Resolution to form—Advertisement—Local Government Act, 1894, sec. 44.—*Held* that the specification of provisions of the Burgh Police Act, 1892, to be adopted in a special lighting district forms a necessary part of the “resolution” under sec. 44 of the Local Government Act, 1894, and must be advertised, to give the public an opportunity to appeal. Where an appeal was taken against a resolution to form a special lighting district, and an objection was sustained that the advertisement of the resolution had been incomplete, *held* that the omission might be supplied in a new advertisement. *Lornie, &c. v Highland District Committee of Perthshire, 25, 124.*

Nuisance—Burning refuse bing—Public Health Act, 1897, sec. 16 (5)—Summary complaint—Want of appeal and absence of suggestion for remedy as defences.—In a summary complaint under the Public Health Act, 1897, by a county sanitary inspector against a colliery company to abate a nuisance caused by a large bing of burning mineral refuse, *held* on the evidence that there was no common law or statutory nuisance; and *opinion* (1) that the great cost of abatement and absence of an appeal were not grounds for refusing the statutory remedy; and (2) that in a case of difficulty in carrying out the statute the complainer should be prepared to show that the orders craved can be enforced. *Dobson v Merry & Cuninghame, 21, 75.*

Nuisance—Fish oil factory—Complaint—Relevancy—Specification—Summary Jurisdiction Act, 1908, sec. 19 (1).—*Held* that a complaint of statutory nuisance which gave no description of the *modus* in which the offence charged was committed was irrelevant from want of specification. *Eastern District Committee of Stirlingshire County Council v Scottish Fish, Oil, and Guano Co., Ltd., 26, 19.*

Sewer—Water-closets in tenements—Order to provide—Ambiguity—Burgh Police Act, 1892, sec. 246.—A burgh local health authority by resolution approved of a form of notice to be sent by their sanitary inspector when water-closets in tenements were to be ordered, and such a notice was sent to the appellant, embodying a requisition, in the words of

Public Health—continued.

sec. 246 of the Burgh Police Act of 1892, for "a sufficient number of water-closets for the separate use of each sex of the inmates and occupiers of the said tenement," after which were added the words "namely, one water-closet." *Held*, on appeal to the Sheriff, that one closet for the separate use of each of two sexes meant two closets, and that the notice was not ambiguous, and was otherwise unassailable. *Finlay v Kilmarnock Town Council*, 23, 201.

Sewer—Connection of outsider's drains with district sewer passing into burgh sewer—Public Health Act, 1897, sec. 111.—Owners of premises outside a special drainage district sought under the statute to connect drains from their premises with a sewer of that district. This sewer itself was connected with a sewer of an adjoining burgh, whence it flowed towards the sea. The local authority of the special drainage district were willing to receive the drainage, but the local authority of the burgh opposed, on the ground that, in view of the future requirements of the burgh and neighbourhood, the burgh sewer ought not to be made to carry this additional drainage. *Held* that the statute only enabled the Sheriff to give effect to the facts of the present day and the immediate future, and petition therefore granted. *Telford, &c., Perth District Committee, &c.*, 24, 241.

Sewer—Injury to lands continuous—Notice—Timeous claim.—The Glasgow Corporation Sewage Act of 1898, sec. 12, provides for the decision by an arbiter of questions relating to injury to property by the operations of the Corporation, but also enacts that claims for compensation must be lodged within six months of the intimation of damage having been done. An owner of property, upon 3rd October, 1907, intimated damage, and made no other intimation of subsequent damage; and he lodged, upon 23rd April, 1908, a claim for damage. *Held* that, in respect of his failure to serve his claim within six months after the said intimation, or to show an intimation within six months before his claim, he could not insist upon the appointment of an arbiter, even although he now averred in his condescendence that the injury had continued until January, 1908. *Ritchie v Corporation of Glasgow*, 25, 52.

Water supply—Charge for surplus water—Primary domestic supply at fixed rate—Surplus available for other purposes on terms to be fixed by Sheriff failing agreement—Spirit merchant's supply partly domestic and partly for trade.—A local water Act gave persons within the district right to contract with the water trustees for a supply from any surplus over the domestic and ordinary consumption, the rate per 1000 gallons and the terms and conditions of supply to be fixed by the Sheriff in case of disagreement. A spirit merchant having petitioned the Sheriff-Substitute to fix the rate, terms, and conditions of supply to his premises,

Public Health—continued.

held that the supply required was partly for domestic and partly for trade purposes, and the Sheriff fixed the terms of supply to be wholly by meter, as if for a trade supply. *Flanagan v Airdrie, Coatbridge, and District Water Trustees*, 21, 49.

Water supply—Charge for surplus water—Special assessment on rental—Public Health Act, 1897, sec. 126 (2).—The tenant of a landward house, garden, and stable was rated thereon for special water assessment, but the collector refused to collect the proportion applicable to the stable, and he was charged for the stable supply separately as for surplus water under sec. 126 (2) of the Public Health Act of 1897, and sued by the local authority for the charge. *Held* that as he was assessed for the special water rate on the premises, and no agreement in lieu of the rate existed, the action must be dismissed. *Stirling County Council v Campbell*, 22, 148.

Water supply—Charge for surplus water—Garden tap in subjects already assessed on.—A burgh water authority having in June, 1905, passed a resolution embodying terms for the supply of water for other than domestic purposes, which resolution was not published or otherwise communicated to the public, sued for these charges in respect of a supply to a garden during the year ending in May, 1906. *Held* that the claim could not stand, being (1) illegal in respect the premises were already assessed on for water supply, and (2) unfounded, as there was no contract in terms of the Burgh Police Act, 1892, sec. 264. *Montrose Town Council v Melvin*, 23, 206.

Water supply—Connections with water main—Houseowner's obligation when main altered.—A feuar laid down service water pipes at his own expense to his houses from the water main in a public street belonging to a town council. Many years afterwards, the main pipe having got corroded and in need of repair and enlargement, the town council substituted a larger main, at a greater distance from the houses, and called on the feuar to connect his service pipes therewith. The feuar having refused to do so, the town council did the work and charged the expense against the feuar as private improvement expenses. *Held*, on an appeal by the feuar, that there was no authority in the Burgh Police Act of 1892, or the Water Works Clauses Acts, or elsewhere, by which he could be compelled to pay the cost of the new connections, his statutory obligation having been implemented when the original connections were made. *Hamilton v Helensburgh Town Council*, 27, 274.

Water supply district—Extension—Inclusion of railway.—Where a district committee resolved to extend a water, &c., district by including ground from which it was separated by a railway, *held* that, as the ground was going to be built on and extension was urgently needed, the railway line was properly also included, even though by such inclu-

Public Health—continued.

sion it might get no benefit and would be heavily assessed. *North British Railway Co., &c. v Dunbarton Western District Committee*, 22, 280.

Water supply district—Formation—Expenses.—A district committee of a county council formed a special water supply district, but on appeal by ratepayers to the Sheriff consented to the appeals being sustained. *Held* that the appellants were entitled to expenses, and the same were modified and decerned for. *North British Railway Co., &c. v Cupar District Committee*, 23, 121.

Public Records.

Births, &c., register—Audit of accounts—Production of books showing fees—Auditor's title to sue.—The statutory auditor of the accounts of a parish council sued the registrar of births, &c., of the parish, who had been appointed upon salary, to produce his records of fees as registrar in order to the audit, and to attend, give explanations, and sign a declaration in terms of sec. 70 (3) of the Local Government Act of 1889 and sec. 36 of the further Act of 1894. The registrar denied that he was accountable for fees, and explained that the real issue was whether he was entitled to keep the fees, which ought to be decided in another process. *Held* that the auditor had a title to sue, and that the registrar was bound to produce his record of fees to the auditor, and order granted as craved, reserving the question of right to the fees. *Kippen v Monteith*, 23, 239.

Births, &c., registration—Landward and burghal district—Right to appoint registrar, assess, &c.—Where in a parish partly landward and partly burghal the parochial board had been in use to administer the Acts for the registration of births, &c., *held* that the parish council, the successor of the board, which included representatives of the burghal part, was in right to administer the Acts, appoint a registrar, and assess, to the exclusion of the town council. *Parish Council of Kirkcudbright v Kirkcudbright Town Council*, 28, 274.

Births register—Legitimation of child declared in application to correct register.—Although a child of a putative marriage is legitimate, its legitimacy must be ascertained and declared by the Court. This done in a petition by the parents in the Sheriff Court to correct the births register under 16 & 17 Vict. cap. 80, sec. 36, which remedy *held* alternative to and not excluded by sec. 35, referring to declarator in the Court of Session. *Bremner, &c. v Watson, &c.*, 28, 339.

Quantum Meruit. *See* CONTRACT II., HIRING IV.

Railway. *See also Arbitration, Assessment II., Carriage, Deposit, Hiring I., Police II., IV., Property, Reparation II. (a), III. (b), Title to Sue, Workmen's Compensation Act I.*

Care of line—Light railway—Unfenced line—Obligation to slow trains for sheep on line.—*Held* that it was the duty of a railway company working a light railway, left unfenced by virtue of its Provisional Order, to run its trains in respect of speed not merely at the rate limited by the Order, but at a reasonably safe rate, regard being had to the configuration of the ground and the natural and customary use of the land. *Morton v Caledonian Railway Co.*, 23, 90.

Care of line—Level crossing—Running down passenger—Duties of railway company and persons using crossings.—The defenders' railway passed through fields pertaining to the pursuers' farm. A farm servant of the pursuers, while using a crossing on the level of the line, with a horse and cart, was run down and killed by a train, as was the horse. The deceased's widow obtained compensation under the Workmen's Compensation Act from the pursuers, and the pursuers now sought reimbursement of the compensation, together with the value of their horse, from the railway company. Circumstances in which it was *held* that fault had not been proved against the defenders. *Dalgety Brothers v Caledonian Railway Co.*, 24, 246.

Care of line—Level crossing—Running down cow—Negligence on approaching train—Obligation to provide gateman.—A farm was intersected by a railway, over which was a level crossing on the line of an old road. The landlord, in dealing with the railway company, had not bargained for a gateman, and no complaint was afterwards made by him or his tenants thereanent. A tenant's cow was killed on the crossing by a train which he thought had passed, as it was much behind time, and he sued for damages. *Held* that they were due, in respect the driver of the train had not whistled, and had enough time and distance to stop the train after the herd was in sight had he been on the watch. *Observed*, following *Barclay*, 10 R. 144, that the tenant's right to a gateman did not exceed that of his landlord. *Lairds v Caledonian Railway Co.*, 27, 272.

Rates—Terminal charges at private railway siding—Specification of such charges and distinction from carriage charges—Railway and Canal Traffic Act, 1888, sec. 33 (3).—Where a railway company's siding was continued on to private ground and formed thenceforward a private siding, and goods were carried by the company between its main line and the terminus of the private siding, *held* that the company was (1) bound, if required, to render an account

Railway—continued.

distinguishing its charges for carriage from its terminal charges, and to specify the latter in detail; and (2) liable to a penalty for failing to render such an account after demand. *Hamilton & Calder v Caledonian Railway Co.*, 22, 38.

Rates—Detention of wagons—Notice of arrival—Siding part of station—Order of Railway and Canal Commission, 26th June, 1911.—Circumstances in which held (1) that a certain railway siding, whilst it was a siding (a) at the end of and beside which a trader (a coal merchant) had an office and a coal bing on ground leased from the railway, (b) of which he leased three wagon lengths for bagging coal, and (c) in which the railway company placed the most of the wagons addressed to the trader, was not a siding exclusively allocated to the trader; (2) that the siding was a part of a station, as opposed to a siding not being in or at a station; and (3) that the railway company required to give notice, oral or written, of the arrival of wagons in respect of which they were to charge demurrage in accordance with the Order —mere knowledge of arrival not being compliance with the Order. *Caledonian Railway Co. v Ross*, 30, 115.

Rates. See ASSESSMENT, BURGH, RAILWAY, VALUATION OF LANDS.

Rape. See REPARATION I.

Reconvention. See ARRESTMENT V., JURISDICTION.

Reduction. See ARBITRATION, LOAN, SALE I., SMALL DEBT ACTS.

Rei Interventus. See LEASE I.

Relocation. See HIRING III., LEASE I., MASTER AND SERVANT I.

Removing. See LEASE VIII., SMALL LANDHOLDERS ACTS.

Reparation. See also BANKRUPTCY IV. (c), VI., CHARGE, DAMAGE BY RIOT, DEBTS RECOVERY ACT, EXPENSES, FISHING, GAME, JURISDICTION, MASTER AND SERVANT I., III., NUISANCE, POINDING, PRESCRIPTION III., PROCESS VI., PROPERTY, PUBLIC HEALTH, RAILWAY, ROAD, SHIP III., SLANDER.

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I. Personal Wrong or Negligence.

Assault—Shooting at poacher.—Held that to discharge a gun wilfully without lawful cause at or in the direction of another person—whether a poacher or not—who is or may very well

Reparation: Personal Wrong or Negligence—continued.

be within range of the gun, is an assault, and renders the person so doing liable in damages. *MacDonald v Robertson*, 27, 103.

Assault or reckless punishment by teacher—Contributory negligence of pupil.—A teacher in a school had reasonable occasion to punish corporally a pupil in her class, and the pupil, to avoid the proposed stroke on her hand, withdrew it, so that the strap used struck the pupil's left eye and injured it. *Held* that this was an accident, caused or contributed to by the pupil's movement in withdrawing her hand, and not the intentional act of the teacher; and that, in the absence of the teacher's fault or negligence, she was not liable in damages. *Skewis v Adams*, 30, 217.

Careless custody—Cattle injured on grazings—Onus.—A butcher sent cattle to be pastured, at an agreed sum, on the defender's hill grazings, where some were injured by falling over rocks and some by their tails being eaten by other cattle unknown. As the pursuer failed to prove fault or negligence of the defender, and, indeed, the defender proved that he had used reasonable care, *held* that the pursuer's case for damages was unfounded. *Observations on the onus in such a case of custody.* *M'Intyre v Drummond*, 28, 245.

Conspiracy—Slender—Trade union—Trade competition.—A stonemason in business on his own account sued the office-bearers of a masters' association of stonemasons for damages for conspiracy and slander. The conspiracy founded on was (a) raising the entrance fee of the association from £50 to £100 for the purpose of keeping the pursuer out of the association; (b) sending circulars to members of the association warning them not to trade with the pursuer under a penalty of being dealt with under the rules; (c) sending deputations to recalcitrant members to enforce the said warning and to procure assurances of obedience; and (d) laying a trap for the pursuer or for recalcitrant members to show that the pursuer was trading in competition with the members of the association, and whereby one of the said members was caught and other members were prevented from dealing with the pursuer, and his business was stopped. The slander averred was contained in the circular mentioned, which was headed "Irregular Trader," and was innuendoed to mean that the pursuer was not honest, but a shady or disreputable tradesman. *Held* there was no relevant ground for the action so far as founded on slander, and, after a proof, that the defenders' association was a lawful one, and with lawful objects, and that the acts done by them with reference to the pursuer were not unlawful, nor carried out in an unlawful way. *Crichton v Edwards, &c.*, 23, 70.

Deforcement of sheriff officer poinding.—The holder of a decree instructed a sheriff officer to execute a poinding of his debtor's furniture. Certain persons produced to the officer a document purporting to convey the furniture to them, and

Reparation : Personal Wrong or Negligence—continued.

objected to the poinding, threatening civil proceedings against the officer if it were not stopped. The officer was not satisfied that the effects were theirs, but desisted from poinding after putting one of them on oath. The creditor sued these persons for damages, in respect of their having prevented the poinding and carried off the effects. *Held* that the officer ought to have gone on with the poinding, that the defenders had not stopped him, and that there was no ground for damages. *M'Connell v Brew, &c., 23, 261.*

Faulty operation in public street—Crushing water main.— In an action for damages in respect of the flooding of the pursuers' premises with water from a main over which the defenders were carrying on the operation of removing and replacing a large iron girder, *held* that the defenders were negligent, in respect that they had not ascertained the position of the water main, and had failed to take special precautions, and were therefore liable to the pursuers in damages for the burst caused by their putting a very heavy weight on the street surface over the main. *Malcolm & Co. v Arrol & Co., Ltd., 21, 130.*

Hirer's failure to pay rent.—The hirer of a sewing machine was sued by the owners for reparation, on the ground that by his failure to pay his rent the machine was sold by his landlord and lost to them, and that he gave them no notice of the landlord's claim. The contract of hiring contained no obligation duly to pay rent. *Held* that the defender was not liable. *Singer Sewing Machine Co., Ltd. v M'Ilwrick, 30, 23.*

Killing tame pigeon—Mistake for wild pigeon.—*Held* that a man shooting lawfully in a public place and killing a tame pigeon flying there at large was liable in reparation to the owner of the pigeon, even although he thought it was a wild bird. *Muirhead v Waugh, 28, 143.*

Maltreatment of infirmary patient by surgeon's assistant—Mora—Expenses.—*Held* (1) that an action by an infirmary patient against an infirmary surgeon, on the ground that he permitted an assistant to perform an operation, was irrelevant; (2) that it was barred by *mora* and acquiescence, having been raised a year and a half after the operation; (3) that under the Public Authorities Protection Act, 1893, it was too late; and (4) that the defender was entitled to expenses as between agent and client under that statute. *Frame v M'Lennan, 28, 242.*

Negligence by arbiter—Counter claim against his fee.—Circumstances in which *held* that a party to an arbitration was entitled to set off against a claim by the arbiter for his fee the expenses to which the former had been put in consequence of a blunder upon the part of the arbiter. *A v B, 23, 289.*

Overlooking bills of lading—Diverting goods of another consignee.—Along with a consignment from the Continent of

Reparation : Personal Wrong or Negligence—continued.

steel billets for the defenders was shipped a consignment for the pursuers. The ship's agent on arrival asked the defenders if the latter consignment was for them, and were answered in the affirmative. Neither of these parties resorted to the bills of lading or to invoices, and the defenders received and used up the goods. *Held* that in the circumstances the defenders' negligence was delict, founding a claim for damages by the pursuers, who had to replace the goods after delay and at a higher price. *Rolled Steel Forge Co., Ltd. v Scottish Iron and Steel Co., Ltd.* 30, 289.

Poisoning of cattle by eating yew branches—Contributory negligence—Acceptance of risk.—A, the tenant of a field, permitted rubbish, which included vegetable matter, to be deposited in it. The servant of B, who had a contract for the removal of refuse from a cemetery in the neighbourhood, brought some of this refuse, which happened to contain yew branches, and laid it in the field. A's cattle, which were grazing at the time, partook of the yew, with fatal results. A and B, and also B's servants, appeared to have been all ignorant of the dangerous nature of the yew plant. In an action of damages raised by A against B in respect of his loss of ten cattle, *held* that in permitting rubbish of this sort to be put in his field A took the risk of matter which might prove injurious being accidentally introduced, and the defender *assuizied*. *King v Lyon, &c.*, 26, 75.

Rape—Relevancy of defender's relations with other women.—In an action for damages in respect of rape (resulting in pregnancy) by the defender on the pursuer, it was averred by the pursuer that the defender had been guilty of lewd conduct in having, a dozen years before, seduced a named young woman so that she bore him a child, and about the same period seduced and ravished another named young woman, who was twice with child to him before he married her. Averments *deleted* from record. *Observations* on admission of such averments to the records of actions for divorce and for damages respectively. *E. T. v T. B. M.*, 21, 156.

Removing boiler of sailing fishing boat—Navigating or fishing gear—Appurtenance for navigation—Sea Fishing Boats (Scotland) Act, 1886.—Circumstances in which *held* that one who had supplied a boiler to a sailing fishing boat upon an indefinite contract, and who removed it without permission of one who became owner of the boat thereafter, was liable to him in damages for so removing it. *Held* that the boiler and its renewals were, in the sense of sec. 17 of the Sea Fishing Boats Act of 1886, appurtenances required for navigation, and not part of fishing gear, though such boilers were originally introduced for hauling the drift nets. *Morrison v M'Lean*, 28, 234.

Shooting accident—Liability of one sportsman for injury to another—Measure of damages.—£500 awarded to a fisher-

Reparation: Personal Wrong or Negligence—continued.

man for loss of his eyesight through his being shot by another fisherman when both were duck shooting at night. *Held* not relevant to consider the defender's means in assessing the damages. *Stephen v Buchan*, 23, 165.

Unauthorised sale under mistake—Live stock in transit carried in same train with consignments to auction mart—Amount of damages.—Some lambs in transit to their purchaser's abode by rail and steamer were penned by the railway company at their yard, pending instructions as to further transmission. Auctioneers, whose consignments for sale were usually penned there, assumed the lambs to be for sale, and, after protest by the railway company, took them away and sold them, and, when the mistake was discovered, tendered neither the lambs nor their full value to their owner. *Held* (rev. Sheriff-Substitute) that they were liable in damages for having sold them without authority, and, upon failure in restitution, that the owner was entitled to the price at which he had just bought them *plus* a trade profit, and to expenses. *M'Intyre v Corson & Co.*, 22, 331.

II. Negligence in the Care of Property—(a) Heritable Property.

Advertisement hoarding falling—Opus manufactum.—A hoarding, used as a billposting station and known to the defenders, its owners, to have been previously blown down, was re-erected on the same plan and without strengthening it, and it was again blown down during a severe gale, falling on a person passing in the street and injuring him. In his action for damages the defenders' plea of *damnum fatale* was repelled, and they were held liable. *Opinions* that such a hoarding was an *opus manufactum*. *M'Gill v General Billposting Co., Ltd.*, 30, 71.

Boiler falling out—Title to sue—Wife of tenant.—The wife of one of the defenders' tenants in a city tenement, while washing clothes in the common washing-house attached to the tenement, was injured by the boiler falling on her. *Held* that she had a title to sue the landlords for damages on the ground of their negligence, and proof allowed. *M'Vey v Bryson, &c.*, 30, 69.

Burn adjoining public park and street—Burgh's duty to fence—Drowning of child—Contributory negligence.—A burn running through a burgh had been narrowed and its flow quickened by piling. It was embanked, but not fenced, either from a public street on one side or a public park on the other, which were connected by a footbridge. The body of a boy of three was found in the burn below the part mentioned. In an action by the father against the town council for reparation on the ground of an omitted duty to fence the burn, *held* that, there being no evidence as to how or where the child fell into the burn, and (following *Stevenson v Glasgow Corporation*, 1908 S.C. 1034) the burn being no danger to adults, the town council was not

Reparation: Negligence in the Care of Property—Heritable Property—continued.

responsible. *Edward v Grangemouth Town Council*, 28, 185.

Cement falling—Injury to street passenger—Inspection—Latent defect.—The pursuer, while walking along a public street in the city of Glasgow, was struck on the head and injured by a piece of cement, which fell from the side of a window on the third storey of a tenement of houses, and which had been dislodged by two boys skylarking at the window. In an action of damages against the proprietor it was proved that the property had been purchased by him about eighteen months before the accident, and had been then inspected and overhauled by a competent tradesman, that the portion of the window from which the cement fell had been patched up at least fourteen years before the accident, that the patching had been properly executed, and that there had been nothing to indicate any defect in the window. *Held* that the proprietor was not liable for the accident. (*Dolan v Burnet*, 23 R. 550, distinguished.) *Bell v Martin*, 21, 190.

Dangerous place in school playground—Contributory negligence of child.—A little boy was injured, while attempting a gymnastic feat, by falling down an open stairway within the school playground. *Held* that the school board were liable in damages, as in the circumstances the existence of this stairway was sufficient to suggest the possibility of such an accident, which should have been provided against. *Wylie v School Board of Lanark*, 24, 66.

Dangerous place in school playground—Gratuitous use of school—Licensee.—A school board, sued for damages in respect of personal injury to a person attending an entertainment in the school, through his falling into a defective drain in the playground, *held* not liable, the use of the school having been given gratuitously to the entertainers, and the proprietors having given no invitation to the pursuer and possessing no interest in the entertainment. *Baptie v School Board of Roberton*, 25, 334.

Defective grating—Title to sue—Wife of tenant.—The pursuer, the wife of one of the defenders' tenants, while hanging out clothes to dry in a common court behind his house, fell through a defective grating. *Held* that the pursuer had a title to sue, as the grating was not in a part of the subjects demised to a tenant, but was under the landlords' control. *Wilson v Brown & Co.*, 29, 252.

Discharge of hot water on open ground adjoining footway—Public safety—Injury to child.—The defenders' servants washed—all in a usual way—the floor of a syrup store with hot water, and brushed or threw out part of the water under or through a closed door on to ground claimed by the defenders as their own and forming an unfenced cart entrance from the street to the store, but open to the public

Reparation: Negligence in the Care of Property—Heritable Property—continued.

and paved like the public street. The pursuer's pupil child was scalded by the water while playing outside the door. *Held* that the defenders' act was negligent, and that they were liable in damages. *Barnett v Cartsburn Sugar Refining Co., Ltd.*, 21, 246.

Grand stand collapsed—Liability of contractor to employer—Res ipsa loquitur—Onus on contractor to explain failure of his work—Delict or breach of contract.—A grand stand, constructed for the use of spectators at a cricket match, collapsed when being used in the way intended, and when not quite half-full of people. *Held* that the builder of the stand, who held himself out as competent for such work, was bound to show that it fell without fault on his part, and (upon the evidence) that he was liable in damages to his employers (the cricket club) whether for breach of the contract to erect a safe stand or for delict in respect of his want of reasonable skill and care. *Perthshire Cricket Club v Leith & Co.*, 21, 37.

Harbour unlit and unfenced—Trespass—Harbours Clauses Act, 1847, sec. 33.—A man who had no harbour or other business at a proprietary pier, open for public use as a pier, fell from it at night at a dangerous place and was injured. In an action for reparation, in which it was found that his allegations of bad lighting were negatived by the evidence, that he had a certain knowledge of the pier, and that the dangerous place could not be fenced without interference with the purposes of the pier, *held* that the proprietor of the pier was not at fault, but that the pursuer, who was trespassing, was by his negligence to blame. *Campbell v Macdonald*, 24, 231.

Proprietor's knowledge of defect.—*Held* that an action against proprietors of heritable property, founded upon a defect in their property, was irrelevant, when it was not averred that the defect had been brought to their knowledge, and that they had failed to remedy it. *Carlin v Glasgow Royal Infirmary*, 26, 110.

Railway station—Hose tripping intending passenger—Contributory negligence.—The servants of a railway company stretched a water hose from a hydrant between the rails of one dock in a large station, across a platform, to another dock, in order to fill a tank in a carriage. A woman, when walking along the platform with her nine-year-old daughter to the place of departure of a train for which she held a ticket, tripped over the hose and got hurt, and she sued the railway company for damages. *Held* that there was no fault in having the hose where it was, or in having no attendant to warn the public, and that, as the woman ought to have seen it, she was herself at fault. *Halley, &c. v North British Railway Co.*, 24, 141.

Shop blind falling—Street accident.—The pursuer, while walking along a street in Glasgow, was struck and injured by the

Reparation: Negligence in the Care of Property—Heritable Property—continued.

fall of an outside shop sun blind, which was the property of the tenant of the shop, and had been fixed by him to a wooden signboard, which was part of the building, and which belonged to and had been erected by the proprietors. In an action of damages against the proprietors, it was proved that the tenant had, according to custom, and in the knowledge of the proprietors, fixed his sun blind to the signboard; that the signboard cracked and burst outwards, allowing the sun blind to fall; and that the signboard was of flimsy construction, not properly secured to the wall of the property, and not strong enough to support the tenant's sun blind. *Hemphill v Mitchells*, 24, 21.

Trespass in building being demolished—Obligation to fence.—

A boy, ten years of age, died from injuries sustained by him in an old building which the defendant as a contractor was demolishing, and which was situated on a large piece of vacant ground. The ground was used by children to play in, but without the defendant's consent. The house was not barricaded off or watched. An action by the deceased's widowed mother for damages held irrelevant, as there was no invitation, and, indeed, the state of the house was warning enough against trespass. *Boyce v Rodger*, 27, 124.

II. Negligence in the Care of Property—(b) Animals.

Cat killing chicken—Liability of owner for its mischief—Scienter.—*Held* that there was no liability on the part of the owner of a cat in consequence of its having killed a neighbour's chicken, although it was averred that the defendant knew that the cat had on a previous occasion killed a chicken. *Allan v Reekie*, 22, 57.

Cat killing fowls—Liability of owner for its mischief.—*Held* that the owner of a cat is liable in damages for injury done by it to a neighbour's fowls. *Observations on Allan v Reekie*, 22 Sh.Ct.Rep. 57, where the contrary was held. *Peden v Charleton*, 22, 91.

Cat killing chickens.—A cat belonging to a neighbour on separate occasions entered a hen run and killed several valuable chickens and a duckling. *Held* that the owner of the cat was liable in damages to the owner of the chickens, it being in the nature of cats to kill chickens, and the cat's owner having failed to control it, he being in knowledge of its propensities. *Turner v Simpson*, 29, 81.

Cat killing pigeons—Scienter.—*Held*, on discussion of the relevancy, that there was no liability on the part of the owner of a domestic cat in consequence of its having killed several homing pigeons, although he knew by intimation from the owner of the pigeons that the cat had, on previous occasions, entered the pigeon loft and killed pigeons there. *Paterson v Howitt*, 29, 216.

Reparation: Negligence in the Care of Property—Animals—continued

Dog worrying sheep—Proof.—*Held* that evidence of a slight nature, corroborative of the testimony of an eye-witness, was sufficient to infer the liability of the owner of the dog identified by the witness as having molested the flock of sheep among which injury was found. *Wilsons v Padkin*, 24, 371.

Dogs worrying sheep—Joint liability of dog owners—Dogs Act, 1906.—In a case of sheep worrying, taken part in by two dogs, only one being identified, *held* that the owner of the latter was liable for the whole damage. *A B v C D*, 27, 212.

Dog worrying horse—Owner of dog—Dogs Act, 1906, sec. 1.—O, walking with his dog, was joined by a dog of R, who had not confined it in any way. Presently both dogs gave chase to two horses, and so frightened the pursuer's that it injured itself. *Held* that R, not O, was owner of R's dog in the sense of the statute, and was not exempt from liability to the pursuer. *Belford v Reid, &c.*, 28, 12.

Dog injuring girl—Scienter—Specification of owner's knowledge of vice.—Where a girl sued the owner of a dog for damages in respect of its having injured her, and his having knowledge of its vicious temperament, *held* that the averments as to his knowledge must be specific, looking to his having had the dog for only three days, and to any previous delinquencies having occurred before his ownership began. Case dismissed for want of specification. *Turner v Neill*, 29, 47.

Dog biting passenger on private road.—The pursuer, walking along a road through the defender's farm steading in the exercise not of a right but of a custom of passage, which had been tolerated by the defender and his predecessors in the farm for many years, was bitten by the defender's dog. *Held* that, where there is toleration and acquiescence, a certain duty in regard to wild or wicked animals having scope to injure passers-by is put upon the owner of such animals, and that the pursuer was entitled to damages. *Bell v Taylor*, 30, 39.

Dog worrying cats—Contributory negligence.—Where a dog killed two valuable kittens in or near a street of a town, *held* that its owner was not liable therefor in damages to the owner of the cats, on the ground that the latter was negligent in letting them be exposed in a place where the natural attacks of dogs might be expected. *Observations on the distinction between ownership of dogs and ownership of cats in reference to liability for their respective acts.* *Brown v Soutar*, 30, 314.

Horse ridden on public street breaking window—Bad riding—Res ipsa loquitur.—*Held*, where the rider of a horse on a public street had acted awkwardly as a rider, and had not exhibited that control of it which he ought to have possessed, that the owner of the horse was liable for damage done by its backing into a shop. *Lanark Plate Glass Mutual Protection Society v Capie*, 24, 156.

Reparation—continued.**II. Negligence in the Care of Property—(e) Other Moveable Property.**

Cart left in street—Contributory negligence of nine-year-old child.—The defender left a cart unattended on a public street, with its shafts in the air and the horse's bellyband attached to one of the shafts. Some children, swinging on the bellyband, brought down the shafts of the cart on the pursuer's child, nine years old, who was either swinging herself or standing with the other children beside the cart. *Held* (rev. Sheriff-Substitute) that, while there was negligence on the part of the defender in leaving the cart on a public street unattended, the contributory negligence of the child was the main cause of the accident, and the pursuer was therefore not entitled to recover damages. *Gallacher v M'Phail*, 22, 70.

III. Servant—(a) Liability to Servant.

Defect in plant—Gangway accident—Fault of fellow-workman—Employers' Liability Act, 1880.—An employer having personally superintended the erection of a safe and sufficient gangway for the use of his workmen carrying materials into a building in the course of erection, one of them, without his knowledge, added to the gangway an extra plank, which was not properly secured or fastened. *Held* that the employer was not liable for injuries sustained by another of his workmen through falling from the gangway owing to this unsecured plank tilting when he stepped upon it. *Hargadon v Steel*, 21, 112.

Defect in "ways, works, and plant"—Work in course of construction—Employers' Liability Act, 1880, sec. 1.—A labourer in the employment of contractors who were carrying out alterations on a railway station was ordered by the gaffer of his squad (who had himself received an order from his own foreman) to give a riveter assistance to shift his tools from one part of the work to another. The riveter ordered the labourer to take a rivet machine across a single plank connecting a high staging with an adjoining girder, and when doing so the labourer fell from the plank and was injured. In an action of damages against the employers, *held* that the crossing was defective, in respect that there should have been two planks instead of one, and that this was a defect in the "ways, works, and plant," for which the employers were liable. *Rooney v P. & W. MacLellan, Ltd.*, 21, 168.

III. Servant—(b) Liability for Servant.

Burgh official's error in law—Closing of shop ultra vires—By-law not in force—Burgh Police Amendment Act, 1911—Shop Hours Act, 1911.—Except in cases in which force is used or threatened, a citizen is not entitled to damages from the employers of a public official because he acted upon an erroneous representation of the law made by that official.

Reparation : Servant—Liability for Servant—continued.

Therefore an action against a town council *held* not relevant in which a shopkeeper stated that he had lost money by closing his shop under a belief induced by the demand of the defenders' inspector acting "in the scope of his duty," when in truth the bye-laws which the inspector wished to enforce had not yet come into full operation. *Braccini & Co. v Provost, &c., of Crieff*, 30, 232.

Closing door of railway carriage on passenger's hand.—Circumstances in which a passenger, who, while in the act of entering a railway carriage, had his hand hurt by the closing of the door of the compartment, was *held* not to have proved negligence on the part of the railway company. *Hendry v Great North of Scotland Railway Co.*, 21, 27.

Closing door of railway carriage.—Circumstances in which *held* that a railway guard, who shut the door of a carriage without warning, and with the result that the hand of a passenger was caught between the door and the door cheek, was not guilty of negligence involving the liability of his employers. *Lang v North British Railway Co.*, 26, 40.

Jamming passenger's hand in railway carriage door.—A passenger, who had entered a railway carriage, but had not taken her seat, had her hand injured in the hinge of the door, which was shut by a porter without warning. *Held* that, in the circumstances, fault on the part of the porter was not proved, and the defenders, the railway company who employed him, *assailed*. *Downie v North British Railway Co.*, 30, 169.

Jerking railway train as passenger entering—Negligence.—Circumstances in which *held* that an intending passenger, whose leg was crushed between the station platform and the footboard of a carriage which he was about to enter, in consequence of a sudden and unexpected movement of the train, was entitled to damages, invitation to board the train being given by its stopping. *Lennox v Caledonian Railway Co.*, 30, 67.

Damage by motor car in charge of repairer's servant—Respondeat superior.—A motor repairer had repaired the defender's motor car, and was testing it on the road through his foreman Jack. The owner and his chauffeur were on the car. While Jack was driving, he recklessly passed, without stopping, a horse and cab belonging to the pursuer, whereby the horse took fright and fell, injuring itself and the cab. The cab owner brought an action for damages against the car owner, in which he averred that Jack was the defender's servant in driving the car, and that the defender was responsible for Jack. *Held* that at the time of the accident Jack was in the employment of the repairer, and was not a servant of the defender, nor under his control, and defender *assailed*. *M'Pherson v Campbell*, 25, 302.

Municipal bath attendant causing personal injury.—Circumstances in which a municipality was *held* liable in damages

Reparation : Servant—Liability for Servant—continued.

for injury occasioned to a customer of the public baths by the attendant having failed to make fast a support on which the customer was entitled to rely. *Robbie v Aberdeen Town Council*, 22, 174.

School teacher's carelessness—Responsibility of school board.—A statutory school board, sued for damages in respect of personal injury to a scholar said to have been caused by the negligence of a teacher in one of their schools, held not liable, being public officials employing as a public official the said teacher. *Harrison v School Board of Glasgow*, 24, 35.

School board officer bullying—Remoteness of injury.—The mother of children attending a board school sued the school board for damages, alleging that a "defaulting officer" appointed by the board under sec. 70 of the Education Act of 1872, who had called at her house to ascertain why the children had not been attending school regularly, had prosecuted his inquiries in a rough and hectoring style, although the pursuer was obviously in an advanced state of pregnancy, with the result that she had suffered serious physical injury through being prematurely confined. Held (1) that the board was responsible for any wrong which the officer might commit in performing his duties, but (2) that the averments of the pursuer were irrelevant, in respect that they did not show that the injury complained of should have been foreseen by the officer as the natural or probable result of his conduct. *Caplan v School Board of Glasgow*, 28, 31.

Servant throwing down lighted match and setting fire to adjoining property.—Circumstances in which a master and tenant of a farm was held not liable to the proprietor of adjoining farms for damage done to the latter's muir by a servant of the former throwing down a lighted match after lighting his pipe, he having been prohibited from using fire for muirburn, and smoking not being within the scope of his employment. *Wood v Rankine*, 29, 295.

IV. Process of Law.

Illegal charge—Registered decree arbitral—Contents not yet payable.—Held that, where by decree arbitral the arbiter found certain sums of money due by one of the parties in the submission to the other, and decreed for payment of these sums within one month after the date of the decree, it was illegal for the party in whose favour decree was given, having registered the award, to charge the other party before the expiry of the month, and that a charge given before the expiry of the month to pay the sums decreed for on the expiry of the month subjected the charger to liability for reparation. *Addison v Brown*, 22, 49.

Oppressive use of diligence—Sequestration for rent.—On 15th October, 1907, the landlords of a house let to a tenant (who had died in September) sequestered and inventoried in

Reparation: Process of Law—continued.

security for the rents to become due at the ensuing terms of Martinmas and Candlemas against the widow of the deceased tenant, averring that she had removed part of the furniture and was threatening to remove the remainder. The summons was, on 23rd October, dismissed after hearing of parties, but on the following day the landlords again sequestrated and inventoried on a summons in the same terms. *Held* that there was oppressive use of diligence, and that the landlords were liable in damages. *Hunter v M'Dougall, &c., 25, 364.*

Unnecessary multiplepoinding.—Auctioneers who raised an action of multiplepoinding as to the price of a horse, knowing that the price was returnable to the buyer, and not being troubled by real double distress, *held* liable in the buyer's expenses as damages, although the multiplepoinding had been held competent and they had been exonerated therein. *Spiers v Dick & Son, 26, 82.*

Wrongous apprehension—Detective outside district—No warrant—Conviction pled in mitigation of damages.—Where two detectives of the burgh of Glasgow arrested outside Glasgow and brought into Glasgow a person who did not reside in Glasgow, and she was convicted of the crime for which she was arrested, *held* that the detectives were liable in damages for the arrest, in respect that they acted outside the limits of their authority without special reason and had no warrant. *Observed* that, though the conviction did not affect the relevancy of the claim, it should be considered in modifying the damages. *M'Crae v Young, &c., 25, 230.*

Wrongous arrestment—No warrant—Funds attached not debtor's.—Creditors who held a decree against A caused arrestments to be used in the hands of a firm in whose employment A was erroneously said to be. The firm had a workman of the same name, and his wage was detained from a Saturday to the next Monday by the firm under the impression that he might be the person to whom the arrestment applied. *Held* in an action at his instance against the arresting creditors that he was entitled to damages. *Gillespie v Nicolson & Co., 26, 99.*

Wrongous diligence—Poinding on decree before charge expired.—*Held* that where, in virtue of a decree in absence obtained in a Justice of the Peace Small Debt Court, an officer, accompanied by two witnesses, had entered the debtor's house eight days after a charge was given (the days of charge in the statute and decree being ten), and had there inventoried furniture, &c., and left a schedule of poinding, a wrongful poinding had been made, and damages were due, and an excuse that it was merely a premonition of a poinding was vain. *Banks v Aitken & Michie, &c., 27, 315.*

Wrongous procedure of health authority.—A local health authority minuted that it would delay making an order

Reparation: Process of Law—continued.

under the Public Health Act stopping the supplying of milk by a town dairy, but the dairy ultronerously requested the pursuer, a cowkeeper supplying milk to it, to stop doing so, as the dairy had undertaken to the local authority not to retail the milk. The pursuer's supply was intermittent for five days, and he sued the local authority for damages. *Held* that his claim was irrelevant under the Act, as there was no proceeding under it, and was incompetent under it, as a summary application was the prescribed process, whereas this action was by a Small Debt summons remitted to the ordinary roll. *Held* further that his claim was irrelevant at common law, as it lay really against the dairy and not the local authority, in the absence of malice. *Oatman v Provost, &c., of Buckhaven, &c.*, 30, 258.

V. Alternative Remedies.

Joint or several delinquency—Two separate actions at common law and under statute respectively—Competency.—A pursuer, in respect of personal injury to him arising from fault or negligence, raised an action for damages against A at common law, and, later, raised an independent action for a similar amount of damages against B, his employer, founded on the extension by the Employers' Liability Act, 1880, of the common law of responsibility for fault or negligence. The latter action *dismissed* as incompetent while the former action was pending. *Mackie v Baxter & Sons*, 22, 252.

Statutory compensation or damages—Arbitration or action—Undertakers—Sub-contractors—Electric Lighting Act, 1882.—A burgh, having obtained statutory powers to lay down electric lighting mains, &c., transferred, with the consent of the Board of Trade, these powers to A, who contracted with B to carry out the work. C, a proprietor of house property in the burgh, having got damage done to his property by the choking of a drain, which he alleged had been negligently injured or unlawfully interfered with in the course of the operations, sued A for damages. *Held* (1) that A was the statutory undertaker, and therefore liable for any damages; and (2) (rev. Sheriff Substitute) that the suitable remedy had been selected, the damage suffered not being the proper subject of statutory compensation and arbitration. *Stewart v North of Scotland Electric Light and Power Co., Ltd.*, 23, 189.

VI. Measure of Damages.

Stoppage of cricket match through faulty construction of grand stand—Loss of gate money as well as admission money to stand.—At a cricket match upon ground specially enclosed for the purpose, a charge was levied on each spectator admitted to the enclosure, and a further separate charge on those admitted to a grand stand within and forming part of the enclosure. During play the grand stand collapsed,

Reparation: Measure of Damages—continued.

injuring numbers of the spectators. The confusion attendant thereon and the occupation of the playing field by the injured and by crowds of the general public prevented the resumption of the match, and even if it had been resumed the fall of the stand caused such a breach in the enclosure as made it impossible thereafter to collect gate money. *Held* that the liability arising from fault of the builder of the stand to his employers (the cricket club) extended not only to the loss of entry money to the stand itself after the fall, but also the loss of entry money to the enclosure. *Perthshire Cricket Club v Leith & Co.*, 21, 37.

Collision of vehicles.—A doctor whose car was seriously damaged in a collision *held* entitled to recover the cost of hiring another car during the time his own car was being repaired, although in point of fact no car was actually hired by him, the cost of hiring a car being taken to be the measure of damage. *Gibb v New Arrol-Johnston Motor Co., Ltd.*, 27, 235.

Repetition. *See INSURANCE, LOAN, PLEDGE, SALE II. (b), III.*

Reponing. *See PROCESS III., SMALL DEBT ACTS.*

Reputed Ownership. *See BANKRUPTCY IV. (c).*

Res Ipsa Loquitur. *See REPARATION.*

Res Judicata. *See also LEASE IV., LOAN.*

Decree in Small Debt Court on relevancy.—A wife, separated without agreement from her husband, sued him in the Small Debt Court for delivery of certain articles, her property. The Sheriff-Substitute dismissed the case on the ground of the husband's right of administration of that which is the wife's. *Held* that the matter was, so far as in the Sheriff Court, between the parties, and about the articles, *res judicata*. *Murdoch v Murdoch*, 21, 305.

Registered English judgment—Inferior Courts Judgments Extension Act, 1882.—*Held* that when an English judgment was duly registered in the appropriate book of a Sheriff Court it founded the plea of *res judicata* in a petition in that Court for a decree conform to the judgment, and excluded consideration of the petition. *O'Connor v Erskine*, 22, 58.

Retention. *See also ARRESTMENT III., BANKRUPTCY II., COMPANY, DEPOSIT, HIRING I., II., III., INDUSTRIAL SOCIETY, LAW AGENT, LEASE V., VI., MASTER AND SERVANT II., PARENT AND CHILD, RIGHT IN SECURITY, SALE II. (a), III.*

Compensation—Loan on security of shares—Liquid debt and illiquid counter claim on accounting for securities.—In an action for payment of a liquid debt the defendant pled that, on an accounting between parties in reference to their intromissions with shares held in security of the debt, there would be no sum due to the pursuers, or, assuming that

Retention—continued.

any sum was due, he was entitled to retain it pending a decision in an action of accounting which had been raised. Defence held irrelevant. *Watsons v Donald*, 21, 148.

Lodging-house keeper.—*Held*, in an action at the instance of a former lodger against the parties with whom he had lodged, for delivery of goods belonging to him and retained by them, that the defenders had a right of retention in respect of a debt due to them by the pursuer for board and lodging in their house. *Gilhooly v Gilrain*, 27, 164.

Revenue. See also INTOXICATING LIQUORS, STAMP, STATUTE.

Dog licence—Exemption of cattle-tending dog—Dogs Act, 1906.—Circumstances in which *held* that an applicant was, under sec. 22 of the Customs Act of 1878, entitled to exemption from dog licence duty in respect of a dog used solely for the purpose of tending swine. *Donaldson v Chief Constable of Forfarshire*, 25, 281.

Right in Security over Heritage. See also ASSESSMENT III., IV., COMPENSATION, EXPENSES I., PUBLIC HEALTH.

Bond—Assignment of rents—Mails and duties—Trustee in debtor's bankruptcy confirmed before decree.—In a competition between (1) the creditors in a bond and disposition in security, in possession of the security subjects under a decree of mails and duties, obtained after the confirmation of the trustee in the debtor's sequestration, and (2) the said trustee, for arrears of rent due from part of these subjects before the obtaining of the decree of mails and duties, *held* that the bondholder was entitled to be ranked and preferred to the arrears, in virtue of her infestment and the assignation of rents therein. *Hepburn v Grant, &c.*, 25, 338.

Bond—Creditor in possession—Liability for breach of lease.—Where a tenant sued his landlord and the bondholders in possession under a decree of mails and duties, jointly and severally, for damages caused by woodcutting operations in breach of an express term of the lease, action *dismissed* as against the bondholders, who were no parties to the lease, reserving the pursuer's right of retention of the rents payable to them as the landlord's assignees. *Roberts v Hall's Trustees, &c.*, 29, 330.

Bond—Enforcement—Foreclosure—Advertisement of adjourned roup prior to petition—Heritable Securities Act, 1894, sec. 8.—*Held* that, where the exposure at which the heritable property forming the security under a bond was put up for sale at a price not exceeding the amount of the debt, exclusive of expenses, was an adjourned exposure, it did not require to be preceded by more than three weeks' advertisement. *Mitchell, &c. v Hart, &c.*, 25, 138.

Bond—Enforcement—Mails and duties—Poinding the ground—Default—No principal or interest in arrear.—*Held* that

Right in Security—continued.

an action upon a bond and disposition in security was irrelevant, which craved decree of maills and duties and of poinding of the ground, when the principal sum had not been called up, the debtor was not *vergens ad inopiam*, and the interest had been paid up till the last half-yearly term, and acknowledged without reservation. *Martin's Trustees v Hamilton, &c.*, 24, 351.

Bond—Enforcement—Maills and duties—Tender of interest in arrear.—Where the holders of a bond and disposition in security were not paid the full interest stipulated for and due at a certain term, and raised an action of maills and duties thereafter, craving a decree in conformity with Schedule A of the Heritable Securities Act, 1894, held that they were at once entitled to the decree, enabling them to draw the rents direct from the tenants in the subjects of security, notwithstanding an offer by the debtor in the bond to pay the arrears of interest, and a statement (not admitted) that intimation had been made that the loan and interest would be paid at the next half-yearly term. *M'Naughton, &c. v Scott, &c.*, 29, 83.

Bond—Enforcement—Sale—Creditor's right to writs.—A heritable creditor is, under the assignation of writs in his bond, entitled to delivery of the titles of his security for the purpose of selling it. So held in a question with the trustee in bankruptcy of the husband of the granter of the bond, claiming the subjects for the general creditors. *Nicolson v Wood*, 21, 232.

Bond—Enforcement—Sale—Surplus price—Multiplepoinding —Whether rents due before sale and collected subsequently by buyer are part of surplus.—Under the power of sale in a first bond and disposition in security a heritable estate belonging to one sequestered in bankruptcy was sold, and a surplus over these bondholders' claims was consigned in bank. Part of the first rents uplifted by the buyer were not his, having accrued before his entry. In a multiple-poinding as to this part of the rents, raised after the late owner had settled with his creditors and been re-invested, held that this part fell to him, and not to creditors holding a postponed security over the estate, who had claimed in the sequestration and had gained no preference by diligence against the rents, and who argued that the rents formed part of the surplus price open to their claim under their security. *Reynard, &c. v Clydesdale Bank*, 27, 67.

Bond—Expenses of calling up notarially.—Circumstances in which held that a bondholder who had failed to get from his debtor a dispensation as to formal calling up of the contents of his bond was not entitled to the expense of a subsequent notarial premonition. *Cumming v Laing*, 21, 120.

Heritable creditor in possession—Accounting to other heritable creditors.—Held that a creditor in possession of the herit-

Right in Security—continued.

able property forming her security was bound to account to a postponed creditor (the holder of a ground annual from the property) for her intromissions with the rents, so that the latter might know whether there was any surplus, and, if so, how it had been applied. *Timothy v Wyper, &c., 27, 305.*

Liferent held by wife—Pledge thereof by her.—Held competent for a wife infest in the liferent of her husband's heritage to consent to a bond and disposition in security of the liferent subjects by the husband. Douglas v Frew, &c., 26, 355.

Summary ejection of joint adventurer—Vitios or precarious possession—Ex facie absolute title of pursuer.—The pursuers and defender entered into a joint adventure for the purchase and use of a plot of building ground. The pursuers were to find the price of the ground and to finance the defender, who was to be the builder of tenements thereon. The price was duly provided by the pursuers, and the title was taken in their names, and after the tenements were erected they granted the defender a letter acknowledging that they held the tenements in security of their advances, and undertaking on repayment to convey them to him, and further acknowledging that the defender was to be financed by them in further building. Held that an action for summary ejection of the defender from a temporary erection, in which he took up his abode, on a portion of the ground was incompetent, in respect that, even if the pursuers had a title to sue, he was neither a vicious nor a precarious possessor. M'Kechnie & Gray v Ross, 25, 219.

Summary ejection of debtors after sale—Competency.—An action of summary ejection by the purchaser of property sold under a bond and disposition in security against the debtors in possession held competent. Douglas v Frew, &c., 26, 355.

Summary ejection of debtors after sale—Caution for violent profits—Sheriff Courts Act, 1907, rule 121.—In an action for summary ejection of proprietors in fee and liferent at the instance of a purchaser from heritable creditors, held that the defenders were not liable to being ordered to find caution for violent profits (following Inglis v Macpherson, 47 S.L.R. 43). Douglas v Frew, &c., 26, 355.

Riot. See DAMAGE BY RIOT.

Risk. See CARRIAGE II., HIRING IV., LOAN, SALE II. (b), SHIP I.

River.

Salmon fishing—Obstruction by dam—Obligation to form fish pass—Salmon Fisheries Acts.—In a small salmon river were three mill dams, the lades of which were nearly continuous and left too little water, except during spates, to

River—*continued.*

let salmon pass up. The District River Board sought an order on the owners of the topmost dam, under sec. 29 of the Salmon Fisheries Act of 1862, for the making of a salmon pass in the dam. The owners pled that salmon did not attempt to pass their dam except in spates, and that it was then no obstruction to them, and that therefore sec. 11 of the Act of 1868 exempted them. *Held* that the dam was an obstruction to the fish in the average state of the river, and formation of a pass *ordered*. *Black v Armstrong & Son, Ltd.*, 24, 290.

Road. *See also ASSESSMENT II., CARRIAGE I., HIRING I., JURISDICTION, POLICE, REPARATION I., II. (a), (b), (c), III. (b), VI.*

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I. Passage on Public Road.

Carriage accident—Motor car passing cab.—Circumstances in which it was *held* that the driver of a motor car, being in the employment of a repairer at the time, passing a horse carriage after warning to stop, and startling the horse, to the damage of its owner, did not render the car owner liable. *M'Pherson v Campbell*, 25, 302.

Collision of vehicles going same way.—*Held* that the driver of a vehicle, intending to bend to the right so as to obstruct possible traffic going the same way as himself, must take care of that traffic, and damages awarded where such a driver was in fault by not taking such care. *Soudan v Bennie*, 26, 71.

Collision of vehicles—Motor cars meeting at right angles—Rule of the road as to passing tram car at rest.—A motor car going rapidly along a street passed a standing tram car on its right side and collided with another motor car which had emerged slowly from a cross street on the left and was turning to its right in front of the tram car. Circumstances in which it was *held* that the collision occurred in consequence of the negligence of the driver of the first motor car, and that there was no contributory negligence on the part of the driver of the second motor car. *Gibb v New Arrol-Johnston Motor Co., Ltd.*, 27, 235.

Collision of vehicles—Rule of the road as to crossing vehicles.—*Held*, where a motor car, going along a main street, and a horse vehicle, coming from a side street, collided, that the presumption of fault was against the horse vehicle crossing in front of the other vehicle. *Miller, &c. v Symington. Symington v Watkins. Watkins v Symington*, 28, 58.

Construction—Slippery street—Reparation—Volenti non fit injuria.—Where a road authority, after consideration and inquiry, laid the surface of a burgh street with a form of asphalt which became slippery with rain, and sloped with

Road: Passage on Public Road—continued.

a camber to the sides of the roadway which at the place of the accident was not excessive, and a horse slipped on the asphalt and got injured thereby, too soon after a rainfall for the application of sand to the surface, *held* that the authority was not at fault. *Held* that an admission of knowledge of danger did not in the circumstances render an action of damages by the horse owner irrelevant. *Ballantyne v Provost, &c., of Hawick, 30, 346.*

Disrepair—Inequality of surface—Tramway rails sunk—Damages.—The pursuers employed the defenders Wallace & Co. to convey a casting weighing 8 tons 16 cwts. from their foundry to Govan. While the lorry containing the casting was proceeding along Govan Road on the tram rails it was overtaken by a tram car. The men in charge proceeded to take the lorry off the car line, but owing to the causeway being about an inch higher than the rail the lorry was unable to surmount the difficulty. The hind wheel of the lorry yielded to the strain, and the lorry tilted over, and the casting was broken. *Held* that the defenders the Corporation of the City of Glasgow were responsible for the defective and dangerous state of the road. The defenders Wallace & Co. were *absolved* from any liability. *Hydepark Foundry Co. v Wallace & Co., &c., 21, 71.*

Disrepair—Ford.—A man driving his one-horse two-wheeled car, containing six persons, through a ford of a Highland burn, suffered some injury to the car and himself, and sued the road authority for damages, but *absolvitor* was granted in respect he proved no fault of the defenders. *Observations on the duty of road authorities with regard to fords.* *Anderson v Arran District Committee of Bute County Council, 26, 322.*

Obstruction by mud-heap—Reparation—Delegation of statutory duty to independent contractor.—Where a local road authority employed an independent contractor to cleanse its roads, and he left mud lying for an unreasonable time in heaps, one of which injured a wayfarer in the dark, *held* that the authority remained liable in damages. *Lowe v Liddesdale District Committee, 22, 260.*

Obstruction by temporary fence—Unopened road—Damages.—A motor car was driven by its owner, who had lost his way on a summer evening, along a newly finished road which, till it should be taken over by the road authority, had been obstructed at one place by a wire fence constructed without central posts. The car was driven against the fence, and the driver, his friend, and the car were injured. *Held*, the road being open for some distance before the fence was reached, that the driver entered the road by implied invitation, that the fence was not so constructed as to be visible to a careful driver in the circumstances, and that the driver and his friend were entitled to damages. *Budd; &c. v Cunningham & Sons, 23, 100.*

Road: Passage on Public Road—continued.

Running down of child—Onus of proof.—*Held* that the mere fact that a young child has been run over on a road by a vehicle is not in itself sufficient to shift the onus of proof as to negligence from the pursuer to the driver or his master. Circumstances of a case in which *found* for the defendant. *Payne v Dyer*, 26, 154.

Running down of dog—Motor car in narrow road.—In an action for damages through the running over on a public road of a dog belonging to the pursuer by a motor car belonging to the defender, *held* that it was not reasonable to drive a car weighing 1½ tons at 12 miles an hour along a road only 12 feet in width, which sloped downward past the opening to a stackyard, and past some dwelling-houses beside the road, and that the owner of the car, which was not sufficiently under control to avoid killing the dog, was liable in damages for its death. *Wilson v Wood*, 24, 225.

Running down of dog—Motor car.—In a Small Debt action of damages for the running down of a dog by a motor car on a public road, *held* that the occurrence was an accident without fault. *Observations on the mutual rights and duties of the owners of dogs and of vehicles on a road.* *Cummings v Walton*, 28, 56.

Running down of foot passenger—Cyclist diverging widely—Rule of the road.—A cyclist, whose proper half (on his left hand) of the street was temporarily blocked by a tramway car near the middle—stopped and discharging passengers to the footway—and against whom the other half of the street was partly obstructed by another tramway car—near the middle, moving to meet him—crossed into the free space on his extreme right hand, and came behind and knocked down a foot passenger. The foot passenger, going in the same direction as the cyclist, was crossing the carriageway, having looked and found no traffic thereon abreast of or meeting him which would affect him. *Held* that the foot passenger had taken all reasonable precautions, and was entitled to assume that the rule of the road would not be infringed by vehicles going the same way as himself, and that the cyclist was on the wrong side of the road, and was liable in damages. *Ramsay v Thomson*, 9 R. 140, *applied*. *Mitchell v Sheal*, 25, 116.

II. Road Authority.

Cleansing ditches—Occupier's liability—Roads Act of 1878, schedule C, sec. 85.—*Held* that the obligation on the occupier of lands adjoining a turnpike road to cleanse the road ditches applies to those inside of the fences enclosing the lands, as well as to those outside them. *Annan District Committee v Cromar*, 25, 105.

Construction—Parish council making road where none before—Local Government Act, 1894, secs. 24, 29.—A parish council linked together scattered crofts in Shetland by making a

Road: Road Authority—continued.

road, and resolved to levy a special parish rate to pay so much of the cost as was not met otherwise. *Held*, in an action for a share of the rate, that the making of the road was not mere repair, maintenance, or improvement, but construction; and that, as the council had no power to construct, the rate was also *ultra vires*, and unenforceable. *Hunter v Edminston*, 26, 250.

Entry on lands for material—Private use of stone by landowner—Interdict.—Where a proprietor of an estate had two quarries in the same ridge of rock, the outer of which had been used for years by the road authority for winning road metal, to be carried across the estate by a road, and the inner had been worked exclusively by the proprietor till its face nearly reached his march with the neighbouring estate, *held*, in the circumstances, that the rock of the inner quarry was required wholly for the proprietor's private use, which included sale purposes, and interdict granted against the winning of it by the road authority. *Opinion* as to the using of the road and quarry as an access to the working of road material on the neighbouring estate, and the removing of the rock to form an access thereto. *Blenkhorn v Hawick District Committee of Roxburgh*, 23, 251.

Entry on enclosed land for materials—Notice—Private use by landowner—Interdict—Turnpike Act, 1831, sec. 80.—In an action for interdict and damages by the proprietrix of a landed estate against the road authority of a county district, in respect of the removal of materials from a sand-pit on the estate without notice, and also because the materials were required for private use on the estate and for sale, *held* that the defenders were entitled to be assuizied and interdict and damages refused, on the ground that the defenders were acting within their statutory rights, that they had been for many years in use to take road materials from the sand-pit and the mound of which it was part, and that it was not proved that the materials which the defenders were proposing to remove were required for the landowner's private use. *Brown, &c. v Aberdeen District Committee*, 28, 41.

Maintenance — Extraordinary traffic — Contractor “by whose order” traffic conducted.—The proprietors of ground contracted with the defenders for the erection of buildings on the ground, and the defenders sub-contracted with F for the whole carting away of material from excavations in the ground, &c. In an action by a local road authority for recovery of the extraordinary expense of repair incurred by reason of the traffic in carting away the material over its roads, *held* that the defenders were not persons “by whose order” the traffic was conducted. *Partick Town Council v Muir & Sons*, 21, 196.

Maintenance—Extraordinary traffic—Roads and Bridges Act, 1878, sec. 57.—Circumstances in which it was held that extraordinary traffic had been conducted by order of a

Road: Road Authority—continued.

carting contractor over highways within a burgh, and that the contractor was liable in the extraordinary expenses incurred by the local authority in repairing the highways by reason of the damage arising from such extraordinary traffic. *Provost, &c., of Partick v Frew*, 21, 356.

Maintenance—Extraordinary traffic—Lime drawn by traction engine—Roads and Bridges Act, 1878, sec. 57.—Circumstances in which it was held that carriage in two trucks behind a 9-ton locomotive along a road connecting two main roads, of 50 tons in all of lime for agricultural purposes, was not extraordinary traffic, and that the road authority must recognise the existence of locomotive traffic, and make provision for the sufficiency of roads by which such traffic must necessarily travel. *Annan District Committee v Patties*, 25, 157.

Maintenance—Extraordinary traffic—Commencement of proceedings for recovery of expense.—Held that the carting of road metal from a quarry, under a contract for its use on district roads generally, was not a “particular work,” in the sense of sec. 24 (b) of the Local Government (Scotland) Act, 1908; that proceedings for the recovery of expenses under sec. 57 of the Roads and Bridges (Scotland) Act, 1878, in respect of the said carting, need not be commenced within six months of the completion of the contract; but that expenses could be claimed only in respect of damage done within twelve months of the date of raising the action. Circumstances in which held that the traffic, having been conducted in the ordinary manner, and not having been extraordinary in quantity, quality, or purpose, did not found an action for recovery of extraordinary expense. *Observations on the mode of fixing normal expenditure. Arbroath District Committee v Provost, &c., of Carnoustie*, 28, 101.

Maintenance — Nuisance — Locomotives Acts — Extraordinary traffic—Damage by traction engine traffic.—A tramway company, charged with the maintenance of part of a burgh street, sued a firm of engineers and a haulage firm for interdict and the cost of repairing damage to the street by the traction of heavy castings and boilers on bogies drawn by steam locomotives, on the ground that such traction was a nuisance under the Locomotives Acts and at common law. Held (1) that the pursuers had a title to sue; (2) that the damage admitted was not caused by a nuisance under the Acts, either from the passage of the locomotives (1861 Act, sec. 13; 1865 Act, sec. 12; 1878 Act, sec. 3), or of the bogies bearing excessive loads (1861 Act, sec. 4); nor (3) by a nuisance at common law, on the ground that the traffic was extraordinary (a) either from its nature, or (b) because it was conveyed by traction engines; but (4) that the damage was not brought about primarily by the defenders’ traffic, but by the pursuers having provided a track which would not sustain ordinary traffic, including that of the defenders. Interdict refused and absolvitor

Road: Road Authority—continued.

granted. Greenock and Port-Glasgow Tramways Co. v Rankin & Blackmore, &c., 29, 30.

Negligence—Fencing—Dangerous part.—Circumstances in which held that a part of a quiet country road, at which an accident had happened, was not dangerous, and that the county council, as road authority, was not liable for damages in respect of the absence of a fence. *Rogerson & Stoddart v Lockerbie District Committee, 24, 317.*

Negligence—Fencing—Dangerous part—Turnpike Act of 1831, sec. 94.—Circumstances in which held that a road authority was not liable in damages in respect of injuries arising to a horse and carriage through an accident at an unfenced part of a high road. *Somerville v District Committee for the Upper Ward of Lanarkshire, 28, 78.*

Negligence—Liability for damage by flooding—Excessive rainfall—Defective drainage—Held (rev. Sheriff-Substitute) that a road authority was liable for damage by flooding to property situated in a street or road under its control, in respect the flooding was due to the gratings in the street or road being insufficient in size and number, and not kept properly clean and redd, and so being inadequate to carry off surface water during an excessive rainfall—the rainfall not being so unusual or extraordinary that the road authority could not be expected to provide against it. *Shettleston Co-operative Society, Ltd. v Lanarkshire Lower Ward District Committee, 21, 176.*

Negligence—Street opening—Independent contractor.—A town council, who by a competent contractor make in a street within a burgh for the laying of a sewer openings which might readily lead to danger, may be answerable for a dangerous mode of doing the work taken by the contractor, causing injury to one of the public lawfully using the street. *Eadie v Crieff Town Council, 26, 182.*

Transfer from county to burgh—Terms of transfer—Circumstances in which roads in a police burgh were taken over for maintenance by the town council from the county council without any payment by either party to the other being found due—the burgh having shown that the extra expense of keeping up roads near the burgh was not caused by the burgh, or was compensated by the extra expense of keeping up the burgh roads caused by the county traffic. *Invergordon Town Council v Ross County Council, 21, 159.*

Transfer from county to burgh—Terms of transfer—Roads and Streets in Burghs Act, 1891.—A county council required a small burgh to take over the roads and lanes within it. Held that payment by the county to the burgh of certain sums at the future date for transfer, to enable the burgh to put the roads, streets, and lanes into good order, was a sufficient condition, the roads being about to be brought up to standard in ordinary course by the county before the date for separation of the management. *County Council of Banffshire v Town Council of Aberchirder, 23, 269.*

Sale. *See also AGENCY, ARRESTMENT III., IV., COMPANY, CONTRACT II., III., DEBTS RECOVERY ACT, POINDING, POLICE I., PROCESS I., VI., PUBLIC HEALTH, RIGHT IN SECURITY, SMALL DEBT ACTS, TITLE TO SUE.*

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I. Constitution of Contract.

Grazing contract or sale—Bankruptcy of possessor—Property in live stock.—A farmer, who kept a selling and buying account with cattle salesmen and got credit from them, received some cattle and sheep from them on his farm, and signed an agreement for grazing them at a price per head for grazing, and a lump price at which he might buy the lot, to bear interest from the date of the agreement. The agreement (come to before the transactions in question) was at first verbal only, but it was reduced to writing after the farmer received the stock but before he became openly insolvent and granted a trust deed for his creditors. In an action by the salesmen for payment to them of the proceeds of a sale of the stock under warrant of Court, held that the property of the stock was in the salesmen and not in the farmer or his voluntary trustee, and that the salesmen were entitled to payment—the agreement being a usual one, and not shown to be a fraud on the creditors. *Swans v Elder, &c.*, 21, 142.

Fraud inducing contract—Recission.—Circumstances in which sellers of goods, who craved re-delivery of them on the ground of the purchaser's fraud inducing them to sell, were held (rev. Sheriff-Substitute) to have failed in proving that any fraud present had influenced the conclusion of the contract. *Gamage, Ltd. v Charlesworth, &c.*, 25, 345.

Consensus—Correspondence—Offer and acceptance.—Sellers and buyers of steel billets wrote sold and bought notes respectively, which crossed in the post and differed in terms, but the buyers acknowledged the sellers' note as appearing to be in order. Soon, however, they objected to a term in it, and correspondence ensued, in which the sellers broke off negotiations, not before accepting two specifications "for execution against your contract," on the buyers' request. The buyers sued for damages upon breach of a contract of the date of the sellers' sale note. Held that there was no completed contract, the acknowledgment of the sale note having been in error, and not an acceptance of the offer

Sale: Constitution of Contract—continued.

made by the note, or at any rate having been duly withdrawn, so that the sellers were entitled to resile, and that the acceptance of specifications was not attributable to the inchoate contract so as to validate it. *Brown, Macfarlane, & Co., Ltd. v Gillieaux & Collinet*, 29, 142.

II. Delivery—(a) Obligation to Deliver; Retention.

Delivery abroad—Condition of cost, insurance, and freight payable on delivery at foreign port—Exception of strikes and holidays—Option to defer and cancel.—Under a contract dated 18th June, 1908, for the sale of 1250 tons of Cowdenbeath coal at a certain price per ton c.i.f. Helsingborg, it was stipulated that strikes and holidays impeding delivery were excepted, and that in the event of strikes or hindrances preventing or delaying delivery the contract might be cancelled or deferred at the choice of the shippers without indemnity. The sellers were unable at once to charter a steamer for Helsingborg, because owners would not send ships there owing to a strike of stevedores' labourers there; and after the cessation of the strike they were unable to obtain coal from the colliery until late in the first half of August owing to the miners' holidays. The purchaser insisted upon immediate shipment, and the sellers cancelled the contract on 3rd August. In an action for damages as upon breach of contract, held that the strike at Helsingborg fell within the exceptions in the contract, and that the sellers were within their rights first in deferring the contract on account of the strike, and afterwards in cancelling it on account of the miners' holidays. *Andersson, &c. v Stevenson & Co.*, 26, 228.

Failure in due delivery—Damages for non-timeous delivery—Damages for delivery of machine disconform to contract—Non-timeous rejection of machine, and retention and use of it—Sale of Goods Act, 1893, sec. 11 (2).—M contracted to supply the S.M.P. Company, by a certain date, with a motor generator for working cinematograph pictures. Delivery was not given till a fortnight after that date, but in the meantime M supplied a temporary set, which broke down. Held that the company was entitled to damages for loss by the non-timeous delivery, and the mode of calculating the damages explained. M contracted to supply the S.M.P. Company with a certain motor generator, and did supply them with one on 3rd September, 1910. The S.M.P. Company repeatedly expressed dissatisfaction with the machine as not being conform to contract, and on 5th October, 1910, wrote refusing to accept it in fulfilment of the contract. In spite of this rejection they continued to use the machine nightly up to 28th February, 1911, and thereafter broke it in two pieces, and continued to use the motor thereof till the date of the proof in this action. Held that, as the Sale of Goods Act, sec. 11 (2), does not entitle a buyer to both the remedies of rejection and of retention with damages, their continuing to use the machine after rejecting it barred

Sale: Delivery—Obligation to Deliver; Retention—continued.

the buyers from claiming damages as for breach of contract. *M'Phail & Co. v Scottish Moving Picture Co., Ltd.*, 27, 296.

Sub-sale—Delivery order—Retention by unpaid seller.—Wood in the defenders' store was sold by M, the owner, to B, who failed to pay for it, but sold it to the pursuers and got the price. The pursuers held M's delivery order, and had no notice that M had cancelled it. In an action for delivery of the wood, *held* that, under sec. 25 (2) of the Sale of Goods Act, 1893, the defenders must deliver it; that, under sec. 47, they could not give effect to the seller's right of retention or claim to stop *in transitu*; and that the simple action for delivery was competent, though a multiple-pointing involving the original seller would have been even more suitable. *Berman & Co. v Hagart & Co.*, 27, 352.

II. Delivery—(b) Obligation to Receive; Rejection.

Rejection or damages—Set off—Sale of Goods Act, 1893, sec. 53.—Circumstances in which damages claimed by a purchaser in a Small Debt action were set off against the price sued for in a Debts Recovery action—the pursuer having objected to the goods whenever he found them faulty in working them up in ordinary course. *Bramson, Kent, & Co. v Evans*, 21, 152.

Rejection and subsequent sale by buyers.—*Held* (1) that the only question under a contract for delivery of a known article of commerce (steam coal) was whether what was delivered reasonably answered the description of what was sold, not whether it suited the buyers' special requirements; (2) that goods could not be regarded as having been rejected when they were ultimately realised by the buyers without judicial authority. *Brownlie & Co. v Mehren & Co.*, 23, 230.

Rejection—Necessity for judicial warrant to re-sell—Horse—Sale of Goods Act, 1893, sec. 48 (3).—R sold F a horse, which F took delivery of, but afterwards returned to R's stable. Thereupon R intimated to F that he would put the horse at livery and apply for a warrant to re-sell unless F consented to a sale. F did not answer letters on that point. R then put the horse at livery, and applied for warrant to sell, asking expenses against F only if he opposed the petition, and reserving F's defences on the merits of the sale transaction. The horse was sold under arrangement between the agents before defences were lodged. F defended, and craved expenses, pleading that the petition was unnecessary. *Held* that R was, in the circumstances, entitled to warrant to sell, and F was liable in expenses. *Question* whether sec. 48 (3) of the Sale of Goods Act applied, by which an unpaid seller may re-sell and claim damages if, after notice, the buyer does not pay or tender. *Ritchie v Fenton*, 24, 251.

Rejection or damages—Instalment contract.—*Held* that the alternatives given to a buyer by sec. 30 (3) of the Sale of

Sale : Delivery—Obligation to Receive; Rejection—continued.

Goods Act, 1893, when mixed goods are tendered, do not exclude the remedy of retaining them and claiming damages as allowed by sec. 11 (2). *Smedley & Co. v Hyslop & Macdonald*, 24, 355.

Rejection — Subsequent use to mitigate loss — Alternative of damages—Sale of Goods Act, 1893, sec 11 (2).—*Held*, where the purchaser of a boiler intimated rejection of it as disconform to contract, and thereafter altered it and used it for ten months, that he was not entitled to fall back upon the alternative remedy provided by the Sale of Goods Act of retaining the boiler and claiming damages for breach of contract. *Young (London), Ltd. v Ewing & Lawson, Ltd.*, 25, 340.

Rejection—Alternative of repudiating or claiming damages—Sale of Goods Act, 1893, sec. 11 (2).—A fish merchant delivered at Liverpool for export to Cuba dried fish, insufficiently cured and improperly packed, in breach of his contract, and the fish arrived in Cuba in an unsaleable condition. *Held*, in an action for the balance of the price, that the buyer (an unskilled person) who was not bound to inspect at Liverpool, was entitled to treat the contract as repudiated, refuse payment of the balance of the price, and recover what he had paid, without rejecting and returning the fish, the seller's conduct having rendered such rejection impossible. *Rowntree v MacDonald*, 29, 204.

Risk—Passing of property—Appropriation by delivery to carrier.—Sellers of goods, unascertained in the sense of the Sale of Goods Act, 1893, sec. 18 (5), delivered them to a carrier, and afterwards sued the carrier for damages in respect of their loss. *Held* that, as the delivery to the carrier was delivery to the buyer by virtue of sec. 32 (1), the assent of the buyer to such delivery, and also to the appropriation thereby of the goods to the contract, was implied, completing the appropriation and passing the property, so that the sellers had no title to sue. *Arrol & Sons, Ltd. v North British Railway Co.*, 25, 355.

Risk—Auction—Condition of roup—Buyer's delay in taking delivery—Loss of subject not accounted for.—An article was sold at a roup under conditions, known to the buyer, that the risk passed to him on sale, that the goods were “held as delivered” to him (*held* to imply that the property passed), and that the price was then due, and the goods must be taken away at once. The buyer did not pay the price or ask for delivery for eleven days, and then the article was not forthcoming, for which no cause was stated by either party. The buyer, having paid the price, sued for delivery. *Held* that, as the auctioneer did not specify any risk by which the article left on deposit with him might have gone amissing, he was liable in damages for breach of his obligation to deliver. *Rosenbloom v Dowell*, 27, 146.

Sale : Delivery—Obligation to Receive ; Rejection—continued.

Risk—Unascertained straw crop—Weight and price unfixed when destroyed.—A farmer contracted with dealers for the sale to them of 30 acres oat straw, expected to amount to 50 tons, for delivery at the buyers' convenience, to be loaded on railway by the seller, and paid for according to the weight delivered by the carrier; and he got in advance the whole price of the estimated weight. Before even 50 tons of the whole farm's straw had been thrashed out a fire destroyed so much of it that delivery became impossible. When sued for repayment of the advance the farmer pled that the contract goods were "the buyers' property and at their risk, and had perished, but failed to show that any particular field or lot had been in view at the date of sale. *Held* that he must repay the advance, because before the fire (1) the goods had not been identified or "ascertained" in the sense of sec. 16 of the Sale of Goods Act, 1893; and (2) they had not been weighed on delivery so as to determine the quantity and price, and the property therein, and the risk had not passed to the buyers. *Clark Brothers v Strachan*, 29, 181.

Risk—Horse—Condition of trial—Onus.—The pursuer, an intending purchaser of a horse, the owner of which, the defender, represented it to be a good worker, quiet, and sound of wind, got delivery of it on three days' trial. The horse was bought on a Saturday, and trotted home some distance, and on the Sunday it was observed to have a cough. On the Monday and Tuesday it was tried at work and found to be unfit even for light work, and on the Wednesday it was found dead. *Held* that the pursuer bore the onus of accounting for the death, that he was to blame for not, earlier than he did, intimating his rejection and terminating the trial, and that he could not get back the price. *M'Cabe v Allison*, 29, 238.

Risk—Passing of property—Express warranty of quality—Carrier agent for buyer.—In an action for the price of stout sold and delivered the buyer pled that it had been found undrinkable within six weeks covered by a guarantee of the seller, and had been returned. *Held* that the property and risk had passed to the buyer on delivery to a carrier for transmission to him, that at despatch the goods were sound, and that the guarantee must be disregarded. *Millers v Horsburgh*, 30, 237.

III. Warranty.

Cow—Implied warranty—Particular purpose—Sale by description—Sale of Goods Act, 1893, secs. 13 and 14 (2).—*Held* that a cow which was sold by a dealer as a good fat cow was by implication warranted sound and fit for consumption as human food. *Reid v Leith*, 24, 285.

Cow—Limited warranty—Latent defect—Fraudulent representation of soundness.—A cow was sold by private bargain to a butcher by one who was not a dealer, and who said there

Sale : Warranty—continued.

was nothing wrong with her so far as he could see. Four days afterwards she was condemned as unfit for human food on account of tuberculosis. She had failed to get in calf, a symptom of tuberculosis, but it was not proved that that, or anything else, had raised a doubt of her soundness in the seller's mind. *Held* that there was no warranty which had been infringed, and no false representation, and that the buyer was not entitled to repetition of the price or to damages. *M'Kenzie v M'Leod*, 26, 105.

Cow—Express warranty by owner—Auctioneers suing for price.

—*Held* in an action by auctioneers for the price of a cow, warranted by the owner and sold by him privately in the ring, but the sale of which was passed through their books, that their conditions, enabling them to ignore the warranty, applied to the sale. *M'Intyre, Ltd. v Reid*, 27, 207.

Cow—Usage implying warranty—Latent defect—Sale of Goods Act, sec. 14 (3).

—A cow was sold with a warranty "time up on . . . and correct in teats." That representation was true. She proved a bad "kicker," dangerous to milk, and it was proved that, according to a custom in the milk cow trade, such a cow may be rejected. *Held* that it was legitimate to prove and give effect to this custom, which was consistent with the law that, subject to the warranty, the buyer must take the cow with all defects which reasonable examination would disclose. *Henderson v Macdonald*, 28, 357.

Dried fish—Description—Implied condition.

—A fish merchant, having undertaken to deliver dried fish in cases of Norwegian type for the Cuban market, *held* in breach of his implied obligation to supply goods corresponding to the description ordered, and of sec. 13 of the Sale of Goods Act, 1893, in respect (1) that the fish were not cured in the manner recognised by the trade as usual and necessary for export to Cuba; and (2) that they were not packed in the close-fitted cases known and used in the trade as cases of the Norwegian type. *Rowntree v MacDonald*, 29, 204.

Dried fish—Merchantable quality—Implied warranty.

—A fish merchant having undertaken to deliver at Liverpool consignments of dried fish for the Cuban market, *held* an implied condition that the fish should be of merchantable quality when delivered at Liverpool, in the sense that they should be in condition to be in due course fit for exposure for sale on arrival at Cuba, in terms of the Sale of Goods Act, 1893, sec. 14 (2). *Rowntree v MacDonald*, 29, 204.

Dried fish—Implied warranty—Particular purpose.

—Where fish were purchased from a fish merchant (by written order accepted) to be delivered f.o.b. at Liverpool, cured and packed for export to Cuba, so as to meet the requirements of the Cuban market, *held* a "particular purpose," within the meaning of the Sale of Goods Act, 1893, sec. 14 (1). *Rowntree v MacDonald*, 29, 204.

Sale: Warranty—continued.

Heritable property—House—Unsuitability for habitation.—The Scottish Congested Districts Board undertook to build on an estate of a Highland proprietor several houses for crofting settlers, who bound themselves severally to repay the cost by instalments. One of the houses, after occupation, admitted damp, and one of the chimneys did not draw properly, having been altered from the plan with that result. The crofter, when sued for instalments, counter claimed for damage from breach of contract in these respects. Circumstances in which he was held justified in so claiming and in retaining part of the instalments. *Congested Districts (Scotland) Commissioners v MacMillan*, 27, 344.

Heritage—Relief of burdens.—*Held* that the purchaser of a heritable subject with entry at Whitsunday, who paid the year's feu-duty at Martinmas, was not entitled to recover one-half from the seller, when the disposition by the latter, containing a clause of relief in the statutory form, was the only reference to the matter. *Cushnie v Jessiman*, 29, 333.

Horse—Condition of passing trial.—A, an intending purchaser of a horse, the owner of which, B, represented it to be sound, obtained it upon a few days' trial. When tried fairly it proved lame, and was reported by a veterinary surgeon to be suffering from serious defects. It was returned to B within the stipulated time, and rejected by him, and he sued for the price. *Held* that, even upon the assumption that the horse was fundamentally sound, A, having obtained a trial and having reasonable grounds for considering that the horse was unsuitable at the time of trial, was entitled to return it. *M'Clelland v Lang*, 23, 141.

Horse—Presumption as to warranty—“Splint.”—*Held*, where A advertised for a sound animal, and in answer to the advertisement B wrote describing one in his possession as sound, that it lay with him to prove that “his written assurance of soundness had been departed from” at a subsequent meeting of parties prior to the sale. *Observed* that soundness of a horse in the case of a “splint” depends upon circumstances, but that where a splint exists it should always be noted by those making an examination and reported. *Cumming v Craig*, 24, 17.

Horse—Auction—Condition that non-disclosure of latent defect should avoid sale—Adoption.—A horse was sold “for whom it may concern” at an auction mart, under conditions which declared the sale void if the animal had an undisclosed radical defect in constitution or wind, but that “no objections as to warranty or otherwise can be entertained except the same be intimated to the auctioneers within three lawful days from day of sale.” The horse in question had, when sold, a radical and discoverable defect in constitution known to, but not disclosed by, the seller, and died from it eleven days after the sale. The buyer only objected after the death. *Held* that the buyer had adopted the void contract by not objecting within three days after

Sale: Warranty—continued.

the sale, and was not entitled to repetition of the price. *Robb & Co., dec. v Watson*, 25, 80.

Horse—Auction catalogue—“Good worker.”—A Clydesdale mare, catalogued for a general horse auction as exposed by contractors and a good worker, was bought by a farmer, and was after trial found unsuitable for certain kinds of farm work, though a good worker as a cart horse. In an action by the sellers against the purchaser for the agreed price, less the net price on a re-sale, *held* that the warranty did not cover farm work. *Collins Brothers v Meldrum*, 28, 111.

Horse—Seller's knowledge of fatal defect—Caveat emptor.—A horse was sold by auction at so low a price that, with other circumstances, serious defects in it might have been suspected. No warranty was given, and the seller knew it was in a dying condition. In an action for repayment of the price, on the ground of the seller's knowledge of latent defect which rendered the goods worthless, *held* that the rule of *caveat emptor* applied, and the buyer could not recover the price. *Callander v Houldsworth*, 29, 54.

Manure—Sample—Breach of contract—Damages—Fertilisers and Feeding Stuffs Act, 1893.—A farmer who purchased a turnip manure according to sample and guaranteed analysis, which manure proved to be a failure, *held* not barred by the statutory provision as to analysis from proving disconformity to sample and warranty, and an action for the price of the manure *dismissed*, and counter claim for damages *allowed* for breach of contract. *North British Manure Co. v Brockie*, 21, 54.

Manure—Implied and statutory warranties—Sale of Goods Act, 1893—Fertilisers and Feeding Stuffs Act, 1906.—*Held* that the statutory warranty of the percentages of constituents of a manure in terms of the latter Act was not inconsistent with an implied warranty of fitness under sec. 14 (1) of the former Act, and that effect would be given to each independently of the other. *Patent Natural Fertilisation Syndicate, Ltd. v Kerr*, 26, 272.

Manure—Implied warranty for particular purpose—Sale of Goods Act, 1893, sec. 14 (1).—Circumstances under which *held* (1) that in a sale of an artificial manure for growing turnips there was the implied statutory warranty; (2) that the buyer relied on the sellers' skill and judgment, although he did not follow their “directions for use”; and (3) that the sale was not of a specified article under its patent or other trade name so as to exclude the implied warranty; (4) *question* whether a condition appearing for the first time on a subsequent invoice formed part of a contract of sale. *Patent Natural Fertilisation Syndicate, Ltd. v Kerr*, 26, 272.

Manure—Fertilisers and Feeding Stuffs Act, 1906—Delivery—Delay—Acceptance—Damages.—An artificial manure com-

Sale: Warranty—continued.

pany delivered to a farmer a quantity of potato manure, disconform to order and to their invoice by deficiency in nutritive constituents—the invoice being a guarantee in terms of the Fertilisers Act of 1906—and they also delivered part of the manure too late for early potato growing. They induced the farmer to accept and use the manure. Serious loss resulted to him by poorness and lateness of the potato crop, and by his having no time to grow a catch crop before the end of the summer. The company was held responsible, and found liable in damages, exceeding the balance of price admittedly due to them. *Lawes Chemical Manure Co., Ltd. v M'Alister*, 30, 88.

Seed potatoes—Description—Re-sale—Sale of Goods Act, sec. 13.—Where a quantity of potatoes were bought, as being of a particular named variety, without warranty or sampling, from the grower, for re-sale as seed potatoes, and after re-sale and planting turned out to belong to another and inferior kind, held that the seller was liable (1) in damages paid, and (2) judicial and extra expenses incurred (after notice) by the first buyer in an action against him by the second buyer, who had re-sold to a third buyer. *MacLaren v Robertson*, 29, 57.

IV. Price.

Price by weight—Tare.—Hops were sold at 85s. per cwt., “tare 5 lbs. per bale,” deliverable in Alloa during five months. The buyers asked the sellers to retain the hops with a view to delivery elsewhere, but gave no instructions; and towards the end of the period the sellers delivered in Alloa. In an action for the price, held that they were entitled so to deliver, and that only the agreed tare for each bale must be deducted from the gross weight of the goods before striking the price—no fraud of the seller or excessive weight of packing material having been alleged, or at least proved. *Clemens Horst Co., Ltd. v Maclay & Co., Ltd*, 24, 11.

Price—Delivery when price not fixed—Sale of Goods Act, 1893, sec. 8.—In a verbal contract for the sale of 200 tons bunker coal there was no *consensus in idem* as to the class of coal sold, the buyer intending to order unscreened coal and the seller believing that the article ordered was screened coal. The seller, in pursuance of his view of the contract, delivered screened coal, which the buyer accepted and used. The market price of screened coal was 6d. a ton more than that of unscreened coal. Held that the market price of the screened coal delivered must be paid. *Forrester & Co., Ltd. v Wallbridge & Co.*, 24, 171.

Price—Payment—Counter claim—Consignation of admitted balance.—Circumstances in which the defenders, who were not rejecting the goods delivered by the pursuers, but were counter claiming damages for breach of contract, were ordained to consign the balance of the admitted contract

Sale : Price—continued.

price under sec. 59 of the Sale of Goods Act, 1893. *Gorrie & Son v Northern Laundry Co., Edinburgh, Ltd.*, 27, 66.

Price—Condition of barter—Interpretation by usage—“Contra account.”—*Held* that the words “contra account” written on an order for goods meant, in the circumstances and among commercial men, that the seller, by implementing the order, came under an obligation to order goods in exchange, and that he was not entitled to demand payment in money. *Mitchell & Sons v Sirdar Rubber Co., Ltd.*, 27, 334.

Price — Deduction for strike interruption — Time contract.—Delivery under a contract for the supply of 500 tons of coal during a year was interrupted by a strike. As deduction from the price had been contracted for on such an occurrence, *held* that the price payable under the contract must suffer abatement in the proportion of the duration of the interruption by strike to the duration of the whole contract. *Arbuckle, Russell, & Co. v Standard Steam Laundry Co., Ltd.*, 28, 228.

Price—Discount—Usage of parties—Express notice of terms of discount disregarded.—Where sellers had been in the habit of selling goods, invoiced with a discount if the price were paid within thirty days, but had never refused to allow discount to the defender even after the thirty days, *held*, in an action for the price of goods, that the usage overrode the notice in the invoices, and discount could not be refused without further agreement or notice. *Buchanan v Macdonald*, 1895, 23 R. 264, referred to. *Oldham Rope and Twine Co., Ltd. v Boyd*, 28, 310.

V. Time Contract.

Delivery by instalments—Buyer's failure to take delivery—Seller's right to cancel contract.—A agreed to sell to B 1000 tons of coal, to be delivered at the rate of two trucks a day. At the time when the contract should have been fully implemented, namely, 5th August, only about one-third of the 1000 tons had been delivered, the shortage being due in part to A's default, but in greater degree to that of B, who had frequently countermanded the daily supply, and had also, on other occasions, allowed his siding to become so crowded with trucks that the railway company refused to send on any more. A continued to deliver coal after 5th August, until he had more than made up the shortage due to his default. *Held* that A was entitled to refuse to make any further deliveries under the contract. *Johnstone & Boath v Purden & Sons*, 23, 196.

Delivery by instalments—Repudiation.—Where the buyers of goods delivered by instalments, with periodic payments of the price, objected to the quality of certain instalments, and offered to consign the contract price for them till settle-

Sale: Time Contract—continued.

ment of disputes, and to pay cash for future satisfactory consignments, held that the sellers had no ground for holding the contract as repudiated. *Smedley & Co. v Hyslop & Macdonald*, 24, 355.

Delivery monthly—Payment of price—“Usual account and terms” — Non-delivery — Damages. — The defenders contracted to supply the pursuers with wood for a year at the rate of three trucks per month. They failed to do so, and pled in defence to an action for damages that the pursuers were in breach by failing to pay for each month's supply at the end of the succeeding month in accordance with the terms “usual account and terms” specified in the contract. Held that, as the defenders had not made a specific demand for payment and intimated their intention to terminate the contract, their interpretation of its terms could not be sustained, and damages awarded, measured by the extra cost of obtaining what they had failed to supply. *Kay & Co. v Murrays*, 26, 91.

Failure to deliver—Measure of damages—No market price.— Under a written contract A undertook to supply daily to B the whole milk raised at his farm for twelve months ending 30th September. On 4th May A ceased to supply, for reasons which were found to be unjustified. Held, in an action for damages on breach of the contract, that as there was no market price whereby to assess the loss under sec. 55 (3) of the Sale of Goods Act, damages should be measured by the loss arising naturally from the breach, or such as might have been in the contemplation of both parties at the time when they made the contract as the probable result of the breach, and therefore A found liable in (1) the sum that B had to pay for supplies from 4th May to 30th September in excess of the contract prices, and (2) a sum for trouble, inconvenience, and expense in searching for a substitute supply. *A. & Co. v B*, 27, 260.

Salmon. *See RIVER.*

Salvage. *See SHIP IV.*

School. *See also ASSESSMENT I., III., IV., ELECTION, MASTER AND SERVANT III., POOR III., REPARATION I., II. (a), III. (b).*

Duty to educate—Obligation to provide elementary education—Child qualified for supplementary course—Board's right to select one of its schools for such.— The father of a boy, aged thirteen and qualified by examination, for “supplementary courses,” desired that he should revise his elementary courses at a neighbouring board school where he could also extend his education. The school board insisted on his attending another of their schools, specially equipped for supplementary courses, and prosecuted the father, on his refusing to send him there, as failing to provide efficient elementary educa-

School—*continued.*

tion. *Held*, in deference to *Barr v Smith*, 5 F. Just. 24, that the board could reasonably set apart a school for supplementary courses and insist on qualified children being sent there for completion of their elementary education; and accused *convicted*. *Perth School Board v Cushnie*, 23, 30.

Duty to educate—Right against educational authority—Exclusion from nearest school.—Certain school boards combined to maintain a school near the borders of their districts, and continued this for over thirty years, but in 1908 disagreed as to the numbers to be admitted, the result being that the children of certain parents in the vicinity were excluded from the school, which remained open to other similar children. The parents sought declarator against the managing school board that their children were entitled to education at this school. There were other schools available within three miles of the parents' homes. *Held* that neither by the Education Acts nor otherwise had parents a right as against school boards to education for their children, still less to education at a particular school. *Forsyth, &c. v School Board of Slamannan*, 25, 129.

Duty to educate—Exclusion from nearest school—Reasonable excuse—Sheriff.—In a prosecution of parents for not educating their children, *held* that the penalty must be imposed, although they were refused education at the nearest school in which the school board of the parish had a share—education being available within three miles. *Muiravonside School Board v Mackay, &c.*, 25, 132.

Duty to educate—Excuse for not sending child to school—Education Act of 1883, sec. 11 (b).—Circumstances in which *held* that a parent had given a reasonable excuse for not sending his son to a certain school as ordered by the school board—his abode being without communication by road to the school, and a nearer school being available, though the board had expelled the boy from it for misbehaviour. *Gowling v School Board of Castleton*, 28, 165.

Lodging of pupil from a distance—Board—Education Act, 1908, sec. 3 (3).—*Held* that a school board's liability to defray the cost of "lodging" a pupil in convenient proximity to a school did not include board of the pupil. *Turnbull v School Board of Monzievaird and Strowan*, 27, 358.

Separation. *See HUSBAND AND WIFE; also ARRESTMENT V., SMALL DEBT ACTS.*

Sequestration. *See BANKRUPTCY IV., LEASE IV.; also ARRESTMENT IV., ASSESSMENT IV., CAUTIONRY, PARTNERSHIP, SMALL DEBT ACTS.*

Service. *See ARRESTMENT II., BANKRUPTCY III., IV. (b), HIRING I., III., PROCESS II., SMALL DEBT ACTS.*

Servitude. *See also POLICE II., PROPERTY.*

Passage—Access to water beyond alleged servient tenement.—A feuar south of A's feu claimed right of passage through A's feu to a source of water beyond A's feu to the north. A sought declarator that there was no passage, and interdict of trespass. No right to the water and no right to traverse A's feu for other purposes having been proved by the defender, circumstances in which declarator and interdict granted. *Mitchell v Messham*, 27, 360.

Settlement. *See LUNATIC, POOR III.*

Sewer. *See POLICE III., PUBLIC HEALTH.*

Sheriff. *See also ARBITRATION, ASSESSMENT II., III., BANKRUPTCY V., VII., BURGH, COMPANY, CONTRACT I., DEBTS RECOVERY ACT, ELECTION, EXECUTOR, EXPENSES I., FRIENDLY SOCIETY, HUSBAND AND WIFE, JURISDICTION, LEASE III., VI., PARENT AND CHILD, PARTNERSHIP, POOR I., PROCESS, PROPERTY, PUBLIC RECORDS, SCHOOL, SMALL DEBT ACTS, TRADE UNION, WORKMEN'S COMPENSATION ACT V., WRIT.*

Declarator—Clause in will void from uncertainty.—Held that the Sheriff was competent to deal under sec. 8 of the Sheriff Courts Act, 1877, with an action of declarator that a clause in a will purporting to dispose of the residue of the testator's estate was void from uncertainty, the sum at stake being less than £1000. *Murray v Watt's Executors*, 23, 140.

Declarator—Proving of tenor—Lost will.—Held that an action of proving the tenor, being an action of declarator, is now competent in the Sheriff Court; and decree granted after proof. *Stewart v Macdougall, &c.*, 30, 327.

Decree conform—Competency.—A medical practitioner in London obtained a judgment in the Westminster County Court against a gentleman domiciled in Forfarshire, but occasionally resident in London, for a balance of a professional account incurred by the defender in London. The certificate of judgment was registered at the instance of the pursuer by the Sheriff-clerk of Forfarshire in terms of the Inferior Courts Judgments Extension Act, 1882, but, as the defender had not been personally served with the summons within the district of the inferior Court at Westminster, diligence was not done upon the registered judgment. The pursuer thereafter presented a petition in the Sheriff Court of Forfarshire at Forfar craving a decree against the defender in conformity with the before-mentioned judgment. Held that the petition was incompetent in the Sheriff Court. *O'Connor v Erskine*, 22, 58.

Sheriff Court Acts. *See PROCESS, SMALL DEBT ACTS.*

Sheriff Officer. *See CHARGE, PROCESS I., REPARATION I., SLANDER, SMALL DEBT ACTS.*

Ship. *See also* CARRIAGE I., II. (d), CONTRACT III., EXPENSES II., HARBOUR, REPARATION I., WORKMEN'S COMPENSATION ACT I., V. (d).

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I. Affreightment.

Cargo—Bill of lading—Exception clause—“Weight and contents unknown.”—A claim by the holder of a bill of lading against a shipowner, averring merely a deficiency in the weight of the contents of certain cases conveyed by the ship, dismissed as irrelevant, where the bill of lading contained a full clause excepting the owner's liability which might cover the circumstances, and was indorsed “weight and contents unknown.” *Browne v Clan Line Steamers, Ltd.*, 22, 273.

Cargo—Charter party—Measurement of timber cargo—Price agreed according to measurement where discharged.—Held that under a charter party for carriage of pit props, which stipulated for payment of freight upon the quantity delivered, the charterer's obligation had been implemented by payment of freight upon a measurement made in accordance with the custom of the port of discharge, notwithstanding a large discrepancy between it and a measurement at the place of despatch and between it and the ship's known capacity for such a cargo. *Actieselskabet Arendal v Kirkwood & Co.*, 23, 226.

Cargo—Charter party—Delivery—Pit props—Conflicting tallies—Presumption.—In the discharge of a cargo of pit props the ship was discharged by derrick and sling and by a chute. The props were placed on bogies, which were taken to the consignees' yard and the props built into stacks. The cargo was tallied for the shipowners by sworn tallymen at the ship's side, and by the consignees only when in stacks. In an action for balance of freight the consignees claimed a deduction from freight for short delivery. *Held* that the tally fell to be made at the place of delivery of the cargo, viz., the ship's side; that if the consignees did not check the cargo there or instruct a joint tally, and in the absence of any proved incorrectness of the tally at the ship's side, that tally must be presumed to be correct, and that there was no short delivery. *Holm & Molzen v Rennie & Co.*, 27, 126.

Cargo—Charter party—Discharge of timber cargo—Conflicting tallies—Presumption.—By charter party it was stipulated that a cargo of sleepers was to be “received at port of discharge as fast as steamer can deliver as customary at each port,” and that the cargo was to be “taken from alongside the ship at merchant's risk and expense.” The sleepers were discharged over the side by the ship's tackles, in slings, which were loosened, and the sleepers dropped

Ship: Affreightment—continued.

into the water. The consignees then grappled the sleepers and took charge of them. The full number of sleepers shipped were tallied at the ship's rail by sworn tallymen for the shipowners, and they were afterwards tallied for the consignees at a less number. There was no evidence that either tally was inaccurate. In an action for a balance of freight, the consignees claimed a deduction for short delivery of cargo. *Held* that delivery of the cargo was complete when the sleepers were put into the water, that the tally at the ship's side, not having been successfully impugned, must be presumed to be correct, and that there was therefore no short delivery. *Holm & Molzen v Brownlee & Co.*, 27, 253.

Cargo—Owner's risk note—Short delivery—Through contract—Cattle.—*Held* that a shipowner, who carried cattle on a through contract involving transit by sea, road, and rail, was protected by the conditions of his consignment note against a claim by the shipper for loss by his cattle not being delivered. *Barr v Glasgow, Dublin, and Londonderry Steam Packet Co., Ltd.*, 26, 315.

Cargo—Owner's risk contract—Common carrier—Short delivered weight.—*Held* (first) that it was competent for a shipowner to contract himself out of liability as a common carrier; and (second) that under a contract of carriage at owner's risk and upon the special stipulation that the shipowner was not accountable for weight, the shipowner was not responsible for short weight on delivery of packages duly carried and delivered. *Manchester Waste Indian rubber Co. v Burns, Ltd.*, 29, 170.

Cargo—Sailing bill—Loss by theft—Common carrier.—*Held* competent for a shipowner to contract himself out of liability as a common carrier by sailing bill brought to the knowledge of the shipper; but that, the shipper having proved delivery to the shipowner of certain goods, the onus of proof shifted to the shipowner to account for them, either by delivery or by reference to some particular condition of the sailing bill by which he was to be exempted from liability in the circumstances of the case. *Mackay & Webster v MacBrayne, Ltd.*, 29, 27.

Cargo—Sailing bill—Loss by theft or unknown cause.—Goods sent by sea on approval were returned by the consignor's and consignees' agent handing them to the ship's purser, who gave no receipt and merely mentioned the freight; but sailing bills were known by the agent to exist and were accessible, though he had not read them. They stated that the shipowners were not common carriers, and that all goods were carried subject to their not being liable for loss of goods during the passage or in their custody, or from theft, &c., on land or afloat, whether by passengers, employees, or other persons. The goods disappeared, probably at a port for transhipment between two of the shipowners' vessels. *Held* that the conditions of the sailing bills were

Ship: Affreightment—continued.

part of the contract, and were wide enough to protect the shipowners in the case averred by the owners of the goods. *Whytock & Reid v MacBrayne, Ltd.*, 30, 188.

Cargo—Verbal contract—Loading—Carrier's responsibility—

Horse.—*Held* that a shipowner was responsible for the safe embarkation of a horse to be carried by sea on a verbal contract, his servants having taken the direction of the loading operations. *Kerr v Williamson*, 23, 307.

Delay in delivering ship—Charter party—Monthly voyages—

Dominant clause.—*Held* under a charter party for steamers for seven monthly voyages in specified months, which provided for seven days' grace beyond the date of expected readiness to load before cancellation, that where notice of expected readiness to load was given for 31st July and the steamer did not arrive until 3rd August, she could not be held to be in fulfilment of the July voyage, the dominant clause in the charter party being the undertaking to provide a steamer within the specified months, and not that allowing days of grace. *Blumenthal & Boese v Russell & Sons*, 25, 154.

Delay—Sailing bill—Deviation—Excuse—Stoppage of work by quay workers.—Circumstances in which shipowners, having excluded their liability as common carriers by publishing sailing bills containing special conditions, which were known to the pursuing consignees and owners of the goods, were held to have excused themselves from landing perishable goods at the port of delivery, although their ship lay there some time, the quay labourers having refused to work on account of conditions resulting from stormy weather, and the crew being exempt from handling cargo. *Held* that proceeding thence to a further port and sending back the goods by railway was not deviation. *Meldrum & Johnston v Laird Line, Ltd.*, 29, 281.
Demurrage—Charter party—Exception of physical causes.—*Held* (1) that certain words in a printed form of charter party, which were inconsistent with a written interpolation and had been left in it by inadvertence, should (following *Dudgeon v Pembroke*, 1877, 2 A.C. 284) be disregarded in construing the contract; and (2) that the occurrence of neap tide, official precautions against the consequences of which interrupted the loading, fell within the express exceptions of the contract, and absolved the charterer from liability for demurrage (following *Carlton S.S. Co. v Castle Mail Packet Co.*, 1898, A.C. 486). *Vinke & Co. v Thorman*, 29, 194.
Demurrage—Charter party—Discharge as customary into trucks—Prohibitive cost of wagons through coal strike.—A charter party provided that cargo was "to be delivered into trucks." There was no strike clause. The ship arrived during a coal strike, and the railway company who owned the trucks refused wagons except on terms which the consignees con-

Ship: Affreightment—continued.

sidered extravagant. They waited for seventeen days till the end of the strike. *Held* that they were liable for demurrage. *Evans & Co. v Kinghorn & Co.*, 30, 221.

Demurrage—Charter party—Discharge as customary at consignee's wharf—Exception of strikes, &c.—Cranes powerless from lack of coal.—Where a charter party stipulated for the delivery of a cargo of iron ore as customary where and as directed by the consignees, who designated their private wharf, where their electric cranes would empty the holds into trucks on their private railway, to be discharged on bings near their furnaces; and when the discharge was delayed by a general strike of coal workers which deprived the cranes, &c., of working power, *held* that the delay resulted from causes within the exception clause of the contract, viz., strikes and any causes beyond the charterers' personal control, and that the charterers were not liable in demurrage or damages for detention. *Alexander & Mair v Jenkins & Son*, 30, 252.

Demurrage—Charter party printed and written—Number of lay days.—In a charter party agreeing for customary discharge as fast as ship could deliver, the document continued—“but six days to be allowed merchants in loading and discharging the ship together.” *Held* that neither a maximum nor a minimum number of lay days had been fixed, and that no question as to customary despatch could be raised till six days had been exceeded for loading and discharging, reckoned together. Proof *allowed* as to the duration of these operations, obstacles in getting a berth, &c., affecting the rate of ordinary despatch. *Bornholdt & Co. v Burt, Bolton, & Haywood, Ltd.*, 30, 295.

II. Mortgage.

Hypothec for necessaries—Sale of foreign ship in Scotland—Lex loci—Competition between mortgagees and claimants for necessaries.—In a process in Scotland for the judicial sale of a Norwegian ship, then lying in Glasgow harbour, warrant of sale was granted, the ship was sold, and the price was consigned in Court. Claims were lodged by mortgagees on the ship for a preference in virtue of their mortgage, and by various firms who had recently in Scotland supplied the ship with necessaries, and who claimed a preference over the mortgagees by virtue of Norwegian law. *Held* (1) that the rights of the claimants for necessaries fell to be determined by the law of Scotland, and (2) that the mortgagees were entitled to be preferred on the fund. *Honeyman & Co. v Actieselskabet United*, 26, 243.

Taking possession—Loan not yet due.—*Held* that the creditor in a mortgage over a ship was entitled to take possession of the ship, although the date for repayment of the sum secured by the mortgage had not yet arrived, as the circumstances inferred that his security was being imperilled. *Cargill v Garscadden, &c.*, 27, 244.

Ship—continued.

III. Navigation.

Collision—Faster vessel passing slower in tow—Breaking of tow rope.—A schooner going down the river Clyde in tow had just been overtaken by a steamer when her tow rope broke, and she collided with a stationary dredger. *Held* that the speed of the overtaking vessel was not so much in excess of the schooner's speed as to lead to the breaking of the tow rope or to imply improper navigation or other fault of the overtaking vessel. *Clemens v Isle of Man Steam Packet Co., Ltd.*, 23, 311.

Collision—Ship leaving pier in face of approaching steamer—Sound signals and lookout at night.—In cross actions of damages arising out of a collision at night off Prince's Pier, Greenock, between the steamship "Ganiamore," proceeding past that pier up channel on the usual course, and the steamship "Dromedary," which had been lying at the pier, and started therefrom down channel, *held* that the "Dromedary" was alone to blame, in respect that she left the pier and headed partly across the channel without keeping a proper lookout and without indicating the course she was taking in the presence of the other vessel. *Earl of Leitrim v Burns, Ltd.*, 25, 65.

Collision—Overtaken vessel sheering across river—Expenses.—A large ship had overtaken and passed in the Clyde a small and light ship, but the latter instead of falling astern sheered to port of the other, and so collided with a third ship coming in the opposite direction and on her own side of the fairway. Circumstances in which *found* that the small sheering vessel was wholly to blame, and was liable in expenses to both the others. *Sloan & Co. v Stewart, &c.*, 30, 35.

Collision with pier—Towing—Control by tug or tow.—In defence to an admitted claim for towage hire the tow claimed damages for injury to her by the tug running her on a breakwater. Circumstances in which *held* that the tug had control of both ships, and had made a faulty manœuvre—the tow being without steam and lashed alongside of the tug, and having abstained from interference with what was being done. *Steel & Bennie, Ltd. v Kerr*, 30, 210.

Fault in anchoring and weighing—Ship carrying off nets drifted against her.—A steamer anchored on a well-known fishing ground. The drift nets of a fishing boat, carried by the tide, fouled the cable of the steamer, and those in charge of the steamer, proceeding to sea, weighed anchor and carried off eleven nets against the wishes of the fishing crew, though the nets could have been at once handed back to them. The nets were returned to the fishermen in three weeks' time in a ruined condition. *Held* that the owners of the steamer were liable for the loss of the nets and for loss of fishing consequent thereon. *Opinion* that it was the duty of the steamer to have despatched the fishing boat earlier and to

Ship: Navigation—continued.

have raised her anchor so as to avoid risk of damage to the drift of nets. *Watson, &c. v Stromberg*, 28, 280.

IV. Salvage.

Fishing boat aground—Jurisdiction at first port after salving—Merchant Shipping Act, 1894, sec. 548.—A steam herring drifter, having run aground on a bank in Loch Linnhe, was hauled off, after repeated efforts, by another steam herring drifter, the crew of which claimed salvage for the services thus rendered. An action was brought in the Sheriff Court at Banff, the salved drifter having, after being salved, sailed through the Caledonian Canal, without voluntarily stopping, to Macduff, in Banffshire, which was therefore said to be the first port to which she was brought, in the sense of sec. 548 of the Merchant Shipping Act, 1894. It was maintained for the defender that Corpach, the southwest entrance to the Caledonian Canal, where the drifter remained for some hours waiting its turn to be admitted to the Canal, was the first port in the sense of the said section, and that the action should have been brought in Inverness-shire. *Held* that the jurisdiction was in the Sheriff Court at Banff, and that the petitioners were entitled to £50 as salvage. *Reid v Couper*, 23, 234.

Process—Ordinary action or summary application.—Where the owner and crew of a fishing boat sued the owner of another fishing boat for salvage not exceeding £300, and liability as well as amount was in dispute, *held* that the action was competent in the Sheriff's Ordinary Court, with the usual right of appeal, and that sec. 547 *et seq.* of the Merchant Shipping Act, 1894, did not limit the pursuers to a "summary application" as defined in the Sheriff Courts Act, 1907, sec. 3 (p). *Opinion* that a summary application would not have been a correct process. *Thirtle, &c. v Copin*, 29, 13.

Towing fishing boats without effective ground tackle—Mutual help among fishermen.—A sailing fishing boat anchored in Eyemouth Bay broke her mooring rope, and was towed back by a steam drifter. Both anchored, but dragged anchor till the sailing boat's anchor lost hold and her mooring chain got twisted in the other's propeller, and she was only 4 feet off dangerous rocks, both being quite helpless. Another steam drifter towed them both off, and kept them in tow till all entered harbour in safety on the tide rising. *Held* that there was a case of salvage, and substantial awards made against each of the tows. An allegation of a custom of mutual help among fishermen, without remuneration, *disregarded*. *Hutt, &c. v Watson. Hutt, &c. v Davidson*, 29, 256.

V. Master and Seamen.

Master—Affreightment—Charter party executed by agents—Title to sue—Master's liability for owners on breach.—*Held* that

Ship: Master and Seamen—continued.

an action of damages for breach of a charter party, entered into between the agents in Scotland of a foreign shipowner and a Scottish merchant, was competently laid against the master of the ship "as representing the owners," the ship having been arrested *ad fundandam jurisdictionem*. *Stevenson & Co. v Brienkopf*, 22, 163.

Seaman—Wages—Premature discharge abroad on shipping contraband of war—Effect of signing off ship's articles—Merchant Shipping Act, 1894, sec. 136.—The pursuer, who had signed articles for foreign service for three years as a donkeyman in the defenders' ship, sued the defenders for damages for breach of contract, and averred that when the ship arrived at Hong Kong he learned that she was clearing for a port in Japan, a belligerent country, with a cargo of Welsh steam coal; that he declined to proceed further, on the ground that the vessel was carrying contraband of war; that the action of the defenders in carrying contraband of war was illegal and rescinded the contract between the pursuer and them; and that on his refusal to proceed he was discharged from the ship, signing off the ship's articles under reservation of his claims against the defenders. *Held* that the pursuer's averments, from want of specification of the destination of the ship and intended use of the coal, were insufficient to support his plea of breach of contract, and that by signing off the ship's articles, in terms of sec. 136 of the Merchant Shipping Act of 1894, he was barred from suing. *Clark v Auchen Shipping Co., Ltd.*, 21, 135.

Seaman—Wages—Advance note.—Where merchants, who held an advance note granted for shipowners to a seaman who had duly gone to sea and had countersigned the note, having given the seaman value for the note, sued on his behalf for payment of its amount, *held* that they had complied with the 140th section of the Merchant Shipping Act of 1894, and were entitled to decree, and that the note was not a bill of exchange, and the question of negotiability did not arise. *Martins v Bow, M'Lachlan, & Co., Ltd.*, 21, 230.

Seaman—Wages—Advance note—Negotiability—Mutual release—Effect of official discharge of seaman.—The master of a vessel issued to two seamen advance notes, requesting the owners of the vessel, three days after her departure, to pay to the order of the seamen the sums of £5 and £4 respectively, provided they sailed and continued on board the vessel and earned their wages during that period in terms of the articles of agreement. The seamen endorsed them and obtained advances upon them from the pursuer, and duly sailed; but on the third day, the crew, being in doubt as to the ship's seaworthiness, insisted upon the master putting into Kingstown for a survey of the vessel. Two days thereafter the men were discharged with their character and ability tickets marked "V.G." and as "Discharged by mutual consent," and were paid the balance of

Ship: Master and Seamen—*continued.*

wages due to them. *Held* (1) that the defenders could not get behind the official mutual release to show that (as they alleged) the men had refused duty, and (2) that whether, as an abstract question of law, an advance note is a negotiable instrument or not, the defenders, having granted the notes for the express purpose of being discounted, were barred from pleading non-liability against the discounter. *Robertson v Fleming & Ferguson, Ltd.*, 21, 277.

Seaman—Wages—Disrating by master—Merchant Shipping Act, 1906, sec. 59.—*Held* that the master of a ship was entitled to disrate an A.B. seaman who was unable to steer properly, even although he had been an A.B. in the Royal Navy and under the Merchant Shipping Acts; and that the master's entry relative thereto in the official log-book did not require to contain the word "disrate." *Inglis v Prentice, Service, & Henderson*, 26, 85.

Shop. See REPARATION III. (b), SUNDAY TRADING.

Sist. See SMALL DEBT ACTS.

Sisting Party. See PROCESS VI.

Slander.

Calumny of business—Representations that business had changed hands—Special and general damage.—In an action of damages for slander, founded upon statements not actionable *per se*, but consisting of untrue and malicious representations that the pursuers' business had been sold or transferred to the defenders, which statements were intended or reasonably likely to produce, and in the ordinary course of things did produce, a general loss of business, as distinct from the loss of particular known customers, *held* that evidence of such general loss of business was admissible to support the action. *Wilson Advertising Co. v Griffiths & Millington, Ltd.*, 22, 356.

Calumny of class—Election leaflet—Adoption.—*Held* that one member of a class of traders had a title to sue in respect of a libel upon the class, and that a candidate who knew of and had adopted a slanderous election leaflet was liable in substantial damages, without proof of special injury, to a person not named, but pointed out therein to those who knew the circumstances. *Nimmo v Munro*, 23, 284.

Injury to character—Newspaper's repute injured by interpolation in communicated report of speech of slanderous words not uttered.—*Held* that a person who had supplied to a newspaper for publication a report of a speech by the chairman of a meeting, and who had interpolated into the speech words which were slanderous and were not uttered, was liable in damages to the newspaper, the reputation of which had suffered by its publishing the false report. *Hunter & Sons, Ltd. v Ballantine*, 30, 248.

Slander—*continued.*

Innuendo of fraud and wilful imposition—Relevancy.—In an action of damages for slander, the words complained of were “you (the pursuer) took M into a public-house when he was under the influence of drink, for the purpose of getting drink from him, and left him there drunk.” *Held* that the words complained of would not bear the innuendo that “the pursuer had thereby been guilty of wilful imposition and fraud upon M,” and the action *dismissed*. *Grassom v M'Combie*, 21, 122.

Innuendo—Employing “scabs” and imposing unfair conditions of labour.—During a trade dispute, a bakers’ trade union issued a handbill, signed by the general secretary and branch secretary, asking the public of certain towns to buy their breadstuffs from certain firms who employed no “scabs” but worked under fair conditions of labour, and not from other named firms who did not employ trade union labour. An action by one of the latter firms against the signatories of the handbill for damages for slander, innuendoed upon the terms of the handbill, was *dismissed* as irrelevant. *Walker v Miller, &c.*, 29, 177.

Joint delict—Privilege of certain defenders—Expenses against them.—A, a parent of a child at school, visited the school and thereafter told two other such parents, B and C, that the teacher was drunk and incapable of teaching. B wrote the school board charging the teacher with the offence stated, and A and C approved of the letter. In an action for damages against all three the offence was not established, and B and C were assailed as privileged and not malicious; but *held* that A acted maliciously and was liable in damages for his slander. All the defenders, having moved that the case should be remitted from the Small Debt to the Ordinary Court, *held* jointly and severally liable in expenses. *Ross v MacLeod, &c.*, 27, 30.

Privilege—Clerk to health authority—Irregular official letter.—Where a clerk to a public health authority wrote a letter, which was impugned as slanderous, but was in accordance with his instructions from the authority, *held* that he was privileged, and, in the absence of specific averments of malice on the defender’s part, action *dismissed*. *Oatman v Leslie*, 29, 317.

Privilege—Employer—Specification of circumstances inferring malice.—In an action at the instance of a dismissed employee against his late employers for slander alleged to be contained in a letter dismissing him, *held* necessary to aver facts and circumstances inferring malice, and, none being set forth, action *dismissed* as irrelevant. *Kennan v Stranraer Creamery Co.*, 24, 326.

Privilege—Litigant—Person libelled in church court.—In an action for damages in respect of a slander by a minister—to the effect that not he but the pursuer was the father of a certain bastard—which was uttered, first, in Sheriff

Slander—continued.

Court pleadings in an action for affiliation against the minister, and, second, in an inquiry before a committee of the presbytery, *held* that there was no evidence of malice against the pursuer, and that the defender, being privileged, must be assoilzied. *M'Grady v Urquhart*, 28, 136.

Privilege—Minister at public meeting—Abuse of committee as “scum and refuse”—Title of individual members to sue.— A minister of a voluntary church, at a public religious meeting called by him, remarked, in Gaelic, as to a concert about to be given in the place, that those who were at the head of it were “the scum and refuse of the place.” In an action for damages by two members of the committee which arranged for the concert, *held* that the minister was not privileged, and that, though he attributed a biblical and religious meaning to his words, they were slanderous, and had injured the pursuers, having exposed them to public hatred, ridicule, and contempt, and substantial damages awarded. *Macdonald, &c. v Morrison*, 28, 252.

Privilege—Relatives of slandered person utterer and hearers—Res gestæ partly privileged.—Where a nephew was accused to his sisters and aunt by his uncle, all living in the same house, of having stolen the uncle's money, and thereafter the nephew was apprehended on information to the police given by the uncle, *held*, in an action on slander raised by the nephew against the uncle, that the latter was privileged in making these accusations, as the information to the police was privileged, and with the previous accusations formed a single act, and, further, that the character of the individuals to whom the accusations were made and the circumstances inferred privilege. *Beattie v Williamson*, 28, 149.

Relevancy—Performing statutory duty—Treacherous and dishonourable conduct.—A farmer, who had pledged himself not to stamp cards as enacted by a statute, raised an action for damages, on the ground that the individual defender calumniously averred of him at a meeting promoted by the defenders that he was now stamping the cards, and he innuendoed the statement as an accusation of treacherous and dishonourable conduct. *Held* that it was not calumnious, and could not be innuendoed as slanderous, to aver of a man that he was obeying the law of the land; and action *dismissed* as irrelevant. *Sutherland v Scottish Rural Workers' Friendly Society, &c.*, 30, 20.

Separate wrongs and one conclusion—Joint and several liability.—*Held* that an action which originally convened several defenders with one joint and several conclusion for damages could competently proceed against one defender after the others had been allowed to go out of the case. “Swindling liar” and “swindling blackguard” *held* actionable, and damages awarded. *Rae v Swanson*, 21, 291.

Unfounded announcement of sale by warrant — Liability of sheriff officer.—A sheriff officer, instructed to sell the furni-

Slander—*continued.*

ture of a defaulting tenant under a Small Debt decree of sequestration and sale, was directed to the pursuer's house as the place to which the furniture had been removed. Without inquiry he instructed a bellman to announce a sale by warrant of the furniture at that house. The debtor's furniture never was there. *Held* that the officer was liable in damages for the injury caused to the pursuer by the unfounded announcement. *Murray v Bonn*, 29, 62.

Small Debt Acts. *See also ASSESSMENT I., EXPENSES II., MULTIPLE-POINDING, PROCESS VIII., RES JUDICATA, SMALL LANDHOLDERS ACTS.*

Abandonment—*Absolvitor or dismissal.*—Where a pursuer in a Small Debt case intimates that he wishes to withdraw or abandon the action and offers full expenses, it is in the Court's discretion either to dismiss the case or grant absolvitor. *Martin v Caledonian Railway Co.*, 27, 152.

Competency—*Aliment—Spouses—Desertion.*—Circumstances in which an action for interim aliment by a wife on the ground of desertion was held competent in the Small Debt Court. *Docherty v Docherty*, 24, 120.

Competency—*Aliment—Spouses—Desertion.*—*Held* that, where the circumstances warrant a wife bringing an action of separation and aliment, an action for interim aliment in the Small Debt Court has ceased to be necessary, and is now incompetent; but, where a wife's complaint against her husband was simple desertion, the practice of suing for aliment in the Small Debt Court was not altered. *Whillans v Whillans*, 24, 122.

Competency—*Count and reckoning by creditor against trustee for creditors.*—Circumstances in which an action by the creditor against a trustee for creditors, who had declared a dividend of 3s. 3d. per £, claiming 5s. per £, was dismissed as incompetent in the Small Debt Court. *Pollocks v Fulton*, 22, 161.

Competency—*Decree dependent on declaratory finding.*—*Held* that a claim for a week's wages in lieu of a week's notice of dismissal, laid by an individual workman against his employer, not on a contract of service but on the employer's contravention of an agreement (not produced) between a trade union of the workmen in his trade and a federation of employers in the same trade, was not competent in the Small Debt Court, but required a foundation by declarator. *M'Cann v Hair*, 30, 299.

Counter claim—*Competency of counter claiming money against claim for delivery of moveables.*—*Held* that a money counter claim is competent in answer to an action for delivery of moveables. *Bernstein v Holloway*, 26, 32.

Counter claim—*Liquid and illiquid—Claim for damages.*—An illiquid claim of damages held not a competent counter

Small Debt Acts—continued.

claim in a Small Debt action for payment of money not otherwise in dispute. *Jack & Co., Ltd. v Hutchison Ltd.*, 27, 96.

Counter claim—Competency—Damages for desertion against wages claim.—*Held* that the practice in the Small Debt Court of allowing counter claims of any kind to be urged, when served in accordance with sec. 11 of the Act of 1837, was not affected by rule 55 of the Sheriff Courts Act of 1907, commented on in *Christie v Birrells*, 19th July, 1910, S.C. 986; and a master's claim for damages on desertion of service *held* competent as counter claim against a servant's claim for wages, neither being liquid, and both being dependent on the same mutual contract. *Grindlay v Callendar Iron Co., Ltd.*, 29, 312.

Counter claim—Necessity for serving—Sheriff Courts Act, 1907, sec. 45, and rule 55.—*Held*, after the commencement of the Sheriff Courts Act of 1907, that it was still necessary to serve a counter claim in a Small Debt case, in order to have the counter claim considered in the case. *Johnstone v M'George*, 24, 83.

Counter claim—Necessity for serving before first diet of appearance—Sheriff Courts Act, 1907, sec. 45, and rule 55.—*Held* that, after the commencement of the Sheriff Courts Act, 1907, it was still necessary, in terms of sec. 11 of the Small Debt Act of 1837, to serve a counter claim in writing in a Small Debt case before the first calling of the case, in order to have the counter claim considered therein. *Simons & Co. v Miller*, 25, 122.

Delivery—Alternative decree to deliver or to pay money—Imprisonment.—*Held* that sec. 2 of the Small Debt Act, 1889, does not sanction an alternative decree for delivery or for money value, but that a pursuer must elect to take either a decree *ad factum præstandum* or a decree for payment. *Opinion* that imprisonment is competent under a Small Debt decree to deliver. *Dalbooca v Millar, &c.*, 21, 183.

Expenses—Agent's fee when debt paid before calling.—*Held* that where a pursuer outside the jurisdiction of the Court took out, through a law agent, a summons for debt, which was returned to the Court for calling, but the debt was paid before the calling, the debtor must be found liable for the agent's fee, as the agent would have to appear to prevent a possible decree of absolvitor if the defendant appeared. *Glyco Metal Co., Ltd. v Allan & Son*, 23, 145.

Expenses—Diligence by both poinding and arrestment.—A creditor holding a decree poinded effects of his debtor in a shop of which he was tenant, but did not sell, meaning the diligence merely to found a process of cessio. Later, he arrested funds of the debtor, and then got from him payment of the debt and of the expenses of poinding, but the debtor refused to pay the expenses of the arrestment

Small Debt Acts—continued.

as an unnecessary diligence. *Held* in an action for them that he must pay them. *Kirwan v Gallacher*, 25, 354.

Limitation of value—Joint and several liability split—Competency.—*Held* that a creditor is not entitled to split a joint and several liability so as to sue each obligant only for the limited amount competent in the Small Debt Court. *Hewat v MacFarlane, &c.*, 23, 109.

Limitation of value—Hire-purchase agreement—Delivery.—*Held* that, in an action for delivery of articles wrongfully sold by a hirer, who held them under a hire-purchase agreement, the value was beyond the £12 limit, being that put upon them in the agreement inventory, £19, not their value as goods sold second-hand by the hirer for £4, and action by the owners against the purchaser *dismissed*. *Jay & Co. v Paton*, 23, 329.

Limiting proviso—Portion of same account due later.—An objection to a Small Debt action, that it was incompetent because the debt was a portion of an account, for another portion of which the pursuers had already got a Small Debt decree, *repelled* in respect that the later portion was not due at the raising of the earlier summons, and so could not have been sued for along with the earlier portion, and was not, by virtue of sec. 2 of the Act of 1837, held to have been abandoned. *John, Ltd. v Chalmers & Son*, 26, 34.

Limiting proviso—Action not called.—Where creditors took out a summons in the Small Debt Court, and served it, for only a part of the prices of goods sold by them to their debtors and then due, but the case was settled before it came into Court, so that it was never tried, *held* that a later Small Debt action for the rest of the prices was not barred by sec. 2 of the Small Debt Act, 1837. *Baird & Stevenson, Ltd. v O'Hare Brothers*, 27, 365.

Lis alibi pendens—Action for subject of counter claim in ordinary Court—Sheriff Courts Acts, 1907-13, rules 43 and 55, &c.—A defendant failed in an ordinary action to state a relevant counter claim, and even to put it in proper form (a separate statement), and it was dismissed, leaving the action pending; *held* that he could not evade the condition of paying expenses on amendment by stating the same claim in the Small Debt Court as a substantive action, and dismissal of the latter *granted* on grounds of *lis alibi pendens* and irrelevancy, not of *res judicata*. *Stevenson, jun. v Fraser & Carmichael*, 30, 277.

Poinding—Preference.—*Held* that a poinding under the Small Debt Acts need not be followed by a sale in order, with the lapse of sixty days, to confer a preference unaffected by sec. 108 of the Bankruptcy Act of 1856. *Bendy Brothers, Ltd. v M'Alister*, 26, 152.

Reduction—Competency of reduction ope exceptionis.—*Held* that a holograph order (by one who held nominally for himself,

Small Debt Acts—continued.

but really in trust, a deposit of money in bank) authorising payment of the money to a third party was reducible *ope exceptionis*, and the claim of the real owner of the money sustained in a multiple poinding, although the bank book was not in his name. *Cowlairs Co-operative Society, Ltd. v M'Kechnie, &c.*, 27, 123.

Remit to Ordinary Court where reported decisions disagree—Expenses.—*Held* to be the duty of a Sheriff-Substitute, where there are conflicting decisions of Sheriffs-Substitute of different counties on an important point raised in the Small Debt Court, to remit the case to the ordinary roll; but that, if the case be a test case, the expenses should as far as possible fall on the party benefited by obtaining a general rule. *Munro v North British Railway Co.*, 21, 19.

Remit to Ordinary Court—Sheriff's discretion.—The defenders in a Small Debt case moved the Sheriff to remit the case to the Ordinary Court on account of the importance to them of the point at issue, but the pursuer objected, and maintained that, having already chosen his tribunal, he should not be forced to go to another Court. *Held* that no sufficient ground for a remit had been stated. *Brown v Corporation of Glasgow*, 25, 185.

Sequestration and sale—Disposal of surplus.—Circumstances in which *held* that an officer who had retained in his hands a surplus arising after sequestration, sale, and payment, ought to have lodged the surplus with the Clerk of Court in terms of the Act, sec. 20. *Aitken v M'Kay*, 22, 47.

Sist—Competency—Litigation and continuation.—Where both parties appeared at the first diet in a Small Debt action for the price of goods sold, and the defender, by a law agent, admitted the delivery, the price, and the liability to pay it, but stated defences of discount and payment, and obtained an adjournment for proof, and at the adjourned diet the defender failed to appear, when decree was given against him, *held* that litigation took place at the first diet, and that a *sist* of the decree was incompetent. *Netherwood & Lee v Scott*, 24, 39.

Sist—Competency—No charge.—Where arrestment in execution followed on a decree in absence on which no charge had been given, a *sist held* competent at any time. *Murray & Sons v Adams*, 25, 152.

Sist—Competency—Absence of party from continued diet.—*Held* (following *Ratcliffe v Farquharson*, 14th May, 1908, S.C. (J.C.) 71), where a case had been adjourned to a future diet, without the merits being entered upon, and the defenders deliberately did not attend the adjourned diet, that the decree then pronounced was a decree in absence, in the sense of sec. 16 of the Small Debt Act, 1837, and a *sist* of it was competent. *Aschengrau v Hillson & Co.*, 28, 141.

Small Landholders Acts.

Crofter—Common grazing—Implied enlargement.—A wooden shed, pertinent to a public jetty on the foreshore *ex adverso* of pasture land held in common by two statutory crofters, was erected near the landward extremity of the jetty by a ferryman in charge of it. A similar shed had been in existence on the same site at the passing of the Crofters Act, 25th June, 1886, but had been demolished shortly afterwards by the landlord, by whose permission in 1907 the ferryman erected the new shed. *Held* that the crofters were not entitled to have the shed removed as an encroachment on their holding, on the ground that the site of the shed was not originally included in the holding as fixed by the Crofters Commission, and that, on the demolition of the original shed, its site, though unfenced from the remainder of their land, and thus capable of access by their stock, was not expressly thrown into and included in their holding, and that any such enlargement of a crofter holding cannot be made by implication. *M'Kechnie, &c. v Cameron*, 25, 278.

Crofter—Common grazing—Erection on grazing—Substitute for house on croft—Interdict—Title of commoners to sue.—A crofter, whose whole croft was condemned as too insanitary to be the site of a dwelling, and who had to remove from his house thereon in consequence, got the landlord's permission to build another house for himself on a site, part of the common grazing land of the township, on which a temporary church had been built but blown away, and which had been abandoned. Crofters interested in the grazing ground objected. *Held* that they had a title to sue, and interdict of the building granted. *Mackenzie, &c. v Kennedy*, 28, 93.

Crofter—Common grazing—Overstocking—Remedy.—One member of a crofters' common grazing committee and another shareholder in the grazing sued in the Small Debt Court the other two committee men and two other shareholders in actions for payment in respect of excess grazing on the common by the defenders' animals. No permission had been granted by the committee to overstock in respect of other shareholders' understocking, but the claims were calculated at the regulation rates for overstocking. The Crofters Act of 1891, sec. 5, enacts that breach of grazing regulations is to be remedied by petition to the Sheriff. *Held* that the claims were really in respect of breach of the regulations, and that it was incompetent to claim damages in the way attempted, and cases dismissed. *M'Millans v MacPhees*, 30, 342.

Crofter—Crofters Commission—Enlargement of holdings—Interdict against premature occupation.—Circumstances in which crofters, to whom part of a farm was assigned for enlargement of their holdings at a future date, interdicted from entering upon or tilling any part of the farm assigned prior to the date of entry fixed by the Crofters Commission.

Small Landholders Acts—continued.

The Congested Districts (Scotland) Commissioners v MacInnes, &c., 26, 343.

Crofter—Irritancy—Subletting or subdividing—Let of grazing.

—*Held* that letting the grazing of the arable and hill land of a crofter's holding was not "subletting" or "subdivision" in the sense of the sub-section, involving the forfeiture of the crofter's right. *Stewart v Mactavish, 21, 116.*

Crofter—Irritancy—Subdivision of croft.—The landlord of a croft sued for irritancy of the tenancy and removal of the tenant, on the ground of subletting or subdivision of the croft. The proof showed that the crofter, an old man, allowed a married son and his family to occupy a barn on the croft near his own dwelling, and that the son worked the croft without wages or profit to himself. *Held* that there was no subletting or subdivision, the son having no exclusive possession of any part of the croft or its fruits. *Matheson v M'Leod, 26, 209.*

Statutory small tenant—Renewal of tenancy—Removal notice given before 1st April, 1912, for removal afterwards.—*Held*, in an action for ejection of a statutory small tenant, founded on a notice dated 3rd May, 1911, to remove at 28th May, 1912, that the tenant for the time being, viz., at the latter date, was entitled, under sec. 32 (4) of the Small Landholders Act of 1911, which came into operation on 1st April, 1912, to a renewal of his tenancy, unless his landlord in a competent process should establish an objection to him; warrant to eject refused *hoc statu*; and a *sist* granted that the landlord might press his objection. *Maclean v Macrae, 28, 361.*

Sponsio Ludicra. *See CONTRACT I., WAGER.*

Stamp. *See also BANKRUPTCY IV. (b).*

Adhesive stamp—Cancellation—Contract note as to marketable security.—The Finance Act of 1909-10, sec. 78 (4), enacts that stamp duties on contract notes are to be denoted by adhesive stamps, cancelled by writing across them a name or initials together with the true date of so writing. Where contract note stamps were properly written across but not dated, *held* that the notes should be admitted in evidence without the dates being added later, being stamped in accordance with sec. 8 of the Stamp Act of 1891 and not struck at by sec. 14 thereof, which contained the general regulations for cancelling adhesive stamps and admitting in evidence instruments stamped with such stamps. *Keizer v Clunie, 28, 332.*

Agreement relative to bill under £5.—Agreements relative to duly stamped bills and to repayment of principal sums therein under £5 need not be stamped. *Exchange Loan Co., &c. v Taylor, 22, 138.*

Stamp—*continued.*

Insufficiently stamped production—Duty of judge—Sisting case for stamping.—*Held* that, although it is *paris judicis* to protect the Revenue by sisting a case for the stamping of a document founded on and obviously insufficiently stamped, it is not necessary to do so when there is a stamp, and its sufficiency is merely doubtful. *O'Brien v O'Brien*, 26, 268.

Statute. *See also PUBLIC HEALTH.*

Construction—Retrospection.—In holding that sec. 2 of the Finance Act, 1912 (granting a certain relief of duty on premises for the sale of intoxicating liquors) was not retrospective, *held* that, as the duty for the year in which the Act was passed could be paid partly after its passing and commencement (even though it actually was paid before that), the relief was eligible for that entire year. *Robertson v Kennedy, &c.*, 29, 300.

Construction—Retrospection—Finance Act, 1912, sec. 2.—*Held* that sec. 2 of the Finance Act, 1912, was not retrospective, but applied only to licence duties for the year current at the passing thereof, 7th August, 1912, and to future years. *Robertson v Kennedy, &c.*, 29, 354.

Street. *See POLICE, REPARATION I., II., ROAD.***Succession.** *See also EXECUTOR, MULTIPLEPOINDING.*

Benefit on death payable to nominee—Unregistered benefit society—Claims of debt and legitim.—A postman was a member of a service benefit society, not registered as a friendly society, and under its rules a levy was made on the surviving members at his death, the proceeds of which were payable to his nominee. Claims were made on this fund in respect of debt by the deceased and of legitim to some of his children. *Held* that the fund was never *in bonis* of the deceased, and not subject to claims of his creditors or kindred—the society and the nominee being the only parties concerned. *Struthers' Representatives v Marshall*, 21, 97.

Heir's liability for deceased's obligations—Constitution—Renunciation by heir—Aliment of bastard.—Circumstances in which an action *held* irrelevant at the instance of an illegitimate child of mature years against her father's heir for aliment on the ground that she was unable to maintain herself through supervening physical infirmity. *Observations* as to the nature and object of a decree *cognitionis causa tantum* against an heir. *Anderson v Fraser*, 26, 130.

Legacy—Substitution in moveables—Consumption.—A man left his estate, which was moveable, by will to his widow and grand-niece in equal shares “during their lifetime,” and on the death of either to become solely the property of the survivor, and he nominated his widow executrix. She

Succession—continued.

intromitted with the whole estate, spent some of it, and died, leaving the furniture intact and the unspent balance in bank in her individual name. *Held* that the will imported a substitution of the grand-niece in the unconsumed fee of the widow's half of the estate, and that she was entitled to vindicate the whole balance against the widow's executor. *Steele v Graydon*, 24, 306.

Summary Application. *See* PROCESS I., II., VI., VIII.

Summary Jurisdiction. *See* PRESCRIPTION III., PROCESS I.

Summary Procedure. *See* PUBLIC HEALTH.

Sunday Trading.

Shop Hours Act, 1911—Act 1661, cap. 18.—Observations per Sheriff-Substitute on the Scots Acts relative to Sabbath breaking and the keeping of open shop on Sundays. Braccini & Co v Provost, &c., of Crieff, 30, 232.

Superior and Vassal. *See also* PROPERTY.

Casualty—Taxed composition on every transmission—Stipulation for early entry—Absence of prohibition of subinfeudation.—A feu charter provided that every heir, donee, or singular successor acquiring right to the subjects should be bound to enter with the superiors within a stated time, and this condition was made a real burden and fortified with an irritancy. The reddendo clause stipulated for payment of a duplēcand of the feu-duty the first year of the entry of every heir or singular successor. There was no prohibition of subinfeudation. *Held* that the superiors were entitled to payment of a casualty on each change of ownership, irrespective of the death of the last vassal who had paid a casualty. *Town Council of Inverness v Stewart*, 25, 359.

Casualty—Taxed composition—Poinding of the ground.—*Held* that a taxed casualty is in its essence a *debitum fundi*, and that two such casualties, falling due in succession, might be recovered under an action of poinding of the ground (*Stewart v Ritchie*, 8 R. 270, followed). *Town Council of Inverness v Stewart*, 25, 359.

Exhibition of vassal's titles, alternatively ejection—Competency.—An action at the instance of a superior against a vassal craving production in Court of his title, and, failing this, craving declarator of no title and warrant to eject summarily the defender, *held* incompetent. *Meacher v M'Cutcheon*, 26, 217.

Suspension. *See* WORKMEN'S COMPENSATION ACT V. (b), (g).

Tacit Relocation. *See HIRING III., LEASE I., VII.*

Testament. *See EXECUTOR, SHERIFF, WRIT.*

Time, Computation of. *See BANKRUPTCY V.*

Title to Sue. *See also AGENCY II., CARRIAGE II. (b), (d), CHURCH, CRIME, FRIENDLY SOCIETY, HERITABLE OR MOVEABLE, HUSBAND AND WIFE I., INSURANCE, LEASE II., LOAN, MULTIPLEPOINDING, PARTNERSHIP, PROCESS VI., PUBLIC RECORDS, REPARATION II., ROAD II., SHIP V., SLANDER, SMALL LANDHOLDERS ACTS, TRADE UNION.*

Assignee—Joiner of disjunct claims.—Where a company to which had been assigned two separate contracts of sale sued thereon an action for damages, *held* that, though the claims for damages were assignable, the pursuers were not entitled to sue the two claims in one libel; and action *dismissed*. *Scottish Iron and Steel Co., Ltd. v Gillieaux & Collinet*, 30, 42.

Auctioneers suing for price of goods sold privately by owner.—A consigned certain horses to a firm of auctioneers for public sale, but they were not sold at the roup. While they were still in the auction yard, A effected a private sale to B, as reputed agent for C, which was entered in the auctioneer's books, and the price was debited to C. The auctioneers paid the price to A, and thereafter, C having refused to pay, they sued him for payment, but did not aver that the entry in their books imported the conditions of roup, so as to give them a title to sue. *Held* that they had no title to sue, and action *dismissed* as irrelevant. *Invergordon Auction Co., Ltd. v Macmillan*, 24, 187.

Auction—Custom—Private sale in auction ring recorded in auctioneers' books—Auctioneers' title to sue.—In an action by auctioneers for the price of a cow which had been exposed at the roup, but only sold by the owner in the ring after exposure, *held* that, as the sale was, by custom known to both the parties and by their conduct, treated as one effected by the auctioneers, having been entered in their books like a sale by auction, the defender was not entitled to withhold payment of the price from them, when demanded by them under one of the conditions of roup. *M'Intyre, Ltd. v Reid*, 27, 207.

Female child above puberty—Aliment—Education Act, 1901, secs. 1 and 2.—*Held* that the mother of a bastard had a title to sue for its aliment, although the child, a female, had emerged from pupillarity, in view of the public law practically compelling the child to undergo education till fourteen years of age. *Young v Elliot*, 21, 12.

Title to Sue—continued.

Friendly society—Process—Amendment of instance.—Where a registered friendly society was sued by its registered name only, a motion to add the names of its trustees as its proper representatives under rule 94 of the Friendly Societies Act, 1896, refused, and action dismissed. *Clugston v Scottish Women's Friendly Society*, 30, 150.

Joint defenders—Husband and wife—Joint liability for furnishings to wife with separate estate.—*Held* (rev. Sheriff-Substitute) that it was not competent to give a joint and several decree against husband and wife for the price of suitable furnishings to the wife, supplied on her order; and the husband *held* liable, although the wife had separate estate and the goods were ordered without his knowledge or authority. *Muller & Co. v Bentleys*, 23, 320.

Paramours suing as husband and wife.—A woman living with a man who was not her husband *held* not entitled to sue an action as his wife along with him as her curator. *Rose, &c. v Coady*, 22, 162.

Public prosecutor—Food and Drugs Acts—Complaint not signed by prosecutor—Delegation of authority to sue.—A complaint laid under the Summary Jurisdiction Acts and the Food and Drugs Acts was not signed by the local inspector of weights and measures, who was the official prosecutor under the Food Acts, but by a law agent on his behalf. Objection that the complaint was incompetent *sustained*. *Braid v Cowan*, 23, 66.

Railway offence—Private prosecutor—Oath of verity—Railways Regulation Act, 1840, sec. 16.—In a prosecution of railway travellers under sec. 16 of the Regulation of Railways Act, 1840, for a fine for their having obstructed the driver of a train by pulling the communication chain and causing the train to be stopped, *held* that the complaint must be dismissed, in respect that it was not made upon oath. *Opinion* that the railway company and its manager had a title to sue; that the driver need not be a party to the complaint; and that the concurrence of the procurator-fiscal was not necessary. *North British Railway Co., &c. v Ruthven, &c.*, 24, 228.

Several defenders—Independent conclusions.—An action containing two separate and independent conclusions against five defenders *held* incompetent. *Opinion* that sec. 9 of the Act of Sederunt of 1839, if not repealed, has fallen into desuetude. *Exchange Loan Co. v Levenson, &c.*, 21, 33.

Soldier on foreign service—Army Act, 1881, sec. 145—Process.—A decree in an action of affiliation and aliment against a soldier, who at the time of his citation on the initial writ was under orders for service beyond the seas, *held* not incompetent or invalidated by sec. 145 (3) of the Army Act as a “process” in a proceeding mentioned in the section, but declared unenforceable against his person, pay, equipment,

Title to Sue—*continued.*

&c., while he should continue in the service. *M'Kinnon v M'Quillan*, 28, 268.

Trade union—Unregistered society—Trustees' individual liability for expenses.—An English trade union raised an action in Scotland in name of its two general trustees and a member of a Scottish branch; *held* that the action was incompetent, as the union had not been registered in Scotland in terms of sec. 6 of the Trade Union Amendment Act of 1876, and that the trustees were not liable as individuals for the expenses found due to the defenders. *M'Ghee, &c. v Shinwell*, &c., 29, 234.

Wife of tenant—Personal injury by defect in house—Reparation or breach of contract.—Circumstances in which *held* that the wife of the tenant of a house, who sued for damages in respect of injury to her person from a defect in the house, was not entitled to sue the landlord, at least upon contract with him. *Grant v M'Whirter*, 26, 115.

Trust—Beneficiary's action against debtor of trust—Right to use trustees' names—Form of caution.—Where testamentary trustees, on payment of the principal sums in a bill and an I O U granted to the testator, delivered up these vouchers to the debtor, and thereafter refused to sue him for interest, *held and declared*, in an action by a residuary legatee against the trustees, that she had right to the use of their names for pursuing the debtor for the interest, on finding caution satisfactory to the Sheriff that she would relieve the trustees of expenses, and account to them for sums recovered, less expenses; and the trustees *ordained* to give their names accordingly. *Observed* that a clause of the settlement dispensing the trustees from doing diligence other than they might think proper had no bearing on the question. *Aitken v Taylor*, &c., 28, 297.

Town Council. *See BURGH, ELECTION, POLICE.*

Trade. *See CONTRACT I., REPARATION I.*

Trade-Name.

Infringement—Use of bankrupt's name and services after his goodwill sold.—The pursuers bought the stock, furniture, fittings, and goodwill of James Dewar from the trustee in his bankruptcy. The defenders engaged Dewar as manager, and started business under the name of J. Dewar & Co., and issued a circular, &c., inferring that the old business was being continued. *Held* that the pursuers were entitled to interdict the defenders from carrying on the business, using the name of Dewar. *Methven Simpson, Ltd. v Gray & Goskirk*, 22, 342.

Interdict—Bottles embossed with name—Property.—In an action by one aerated water manufacturer against another for interdict against using bottles bearing his name and being his

Trade-Name—continued.

property, held that a defence that the pursuer had retained the defender's bottles was irrelevant. *Danks v Watson*, 21, 347.

Trade Union. See also CONTRACT I., TITLE TO SUE.

Extra-legal association—*Trade Disputes Act*, 1906, sec. 4—
Contract or tort.—Held that sec. 4 (1) of the Trade Disputes Act of 1906, forbidding any Court to entertain an action against a trade union in respect of any tortious act of the union, applied to render incompetent an application for interdict against the receiving by a bottle exchange (composed of aerated water makers and being a trade union) of the bottles of the pursuer, also an aerated water maker, but not a member of the union, and unwilling that it should receive his bottles. *Caldwell v Glasgow and West of Scotland Aerated Water Manufacturers' Defence Association*, 26, 94.

Extra-legal association—*Trade Disputes Act*, 1906, sec. 4 (1)—
Trade dispute in Canada.—An action craving (1) interdict against the interference of a trade union with the pursuer's employment, and (2) payment of £2000 as damages for slander, raised by a former member against a trade union in Scotland, held excluded from the purview of the Court by sec. 4 (1) of the Act. Opinion that the protection of the statute covered an act of a trade union in furtherance of a trade dispute furth of the United Kingdom. *Winter v The United Society of Boilermakers and Iron and Steel Shipbuilders*, 26, 350.

Power to sue—*Trustees not authorised by rules*.—Trustees of a trade union raised an action against members of the union as officers who should have accounted for money to the pursuers. The rules only authorised the trustees to take action against officers for misappropriation, or the executive council to take action at law. Held that this might entitle the trustees to prosecute, but not, in view of sec. 9 of the Trade Union Act of 1871, to sue a civil action when no plea of misappropriation was stated. *M'Ghee, &c. v Shinwell, &c.*, 29, 234.

Trespass. See LEASE II., VII., PROPERTY, REPARATION I., II. (a), SERVITUDE, WINTER HERDING ACT.**Truck Acts.** See CRIME, MASTER AND SERVANT II.**Trust.** See also ARRESTMENT III., BANKRUPTCY IV. (c), VI., COMPANY, EXPENSES I., FURTHCOMING, INSURANCE, JURISDICTION, MULTIPLE-POINDING, TITLE TO SUE.

Assumption of new trustees—*Resignation of sole trustee*—*Consent of beneficiaries*—*Trusts Act*, 1867, sec. 10.—A sole trustee assumed new trustees and resigned the trust, *unico contextu*. Consent of the beneficiaries was not obtained as

Trust—*continued.*

required by sec. 10 of the Trusts Act, 1867. *Held* that the assumption and resignation were ineffectual. *Macnaughton v M'Kerchar, &c., 26, 238.*

Administration—*Obligation to relieve of burdens—Liability personally or as trustees—Omission to provide for liability.*—Where trustees disposed on sale heritable property for which a casualty was due but not demanded, and thereafter distributed the trust estate and were discharged by the beneficiaries, *held* that they were jointly and severally liable to the buyer, who had paid the casualty, in respect of the usual clause of relief in the disposition combined with their imprudence in paying away the estate without providing for the casualty. *Heron, &c. v MacKirdy, &c., 27, 129.*

Trustee. *See* BANKRUPTCY IV. (c), VI., JURISDICTION.

Turnpike. *See* ROAD.

Usage. *See* LEASE I., SALE III., IV., V., SHIP I., IV.

Valuation of Lands. *See also ASSESSMENT II., III.*

Agricultural lands—Reduction for occupiers' rates by Agricultural Rates, &c., Act, 1896, 59 & 60 Vict. cap. 37—Tomato houses.—*Held* that occupiers of tomato houses, erected and maintained in connection with the culture and sale of tomatoes, were entitled to the reduced valuation provided by this Act. *Lanark Parish Council v Watson, &c.*, 23, 108.

Valuation roll—Rent reduced after entry final—Repetition of poor and school rates.—The entry of a property in the valuation roll was made from the landlord's return of rent as of £1200 value. By agreement with the tenant he subsequently reduced the rent by £200. Having paid the owner's proportion of poor and school rates upon £1200 he re-claimed the proportion thereof applicable to £200 from the collector of rates. *Held* that, as the valuation roll was conclusive as to value, a reduction of rent did not found an action of repetition; and the defender *assailed*. *Whitelaw's Trustees v Wood*, 27, 17.

Violent Profits. *See LEASE VII., VIII., PROPERTY, RIGHT IN SECURITY.***Vitiosus Intromission.** *See also LEASE IV., POINDING.*

Bona fides eliding penal consequences—Accounts rendered.—Circumstances in which *held* that, although the character of vitiosus intromitter had been fixed on the defender, he was not liable in the penal consequences, as no fraud or improper motive had been proved against him, and he had accounted for his intromissions. *Pringle & Alexander v Semple*, 29, 187.

Bona fides eliding penal consequences—Accounts rendered.—Accountants, without title, intromitted with the estate of a person deceased, in *bona fide* and with no object but the distribution of the estate among those who might be found entitled thereto; *held* that they were not liable *in solidum* to a creditor of the deceased. *Lees v Reid & Campbell, &c.*, 29, 191.

Father uplifting contents of deceased's policy—Aliment of deceased's bastard.—The father of one deceased drew his son's benefits from a friendly society, for which the father had paid, and the contents of two life insurance policies, one of which was payable to the deceased and the other to the father, but the premiums on both of which had been paid by the father. In an action by the mother of an illegitimate pupil child of the deceased for its aliment,

Vitios Intromission—*continued.*

held that the father was a vicious intromitter with the sums payable to the deceased, but not with the other sum, and must pay them, less just deductions, to the pursuer as a creditor of the deceased. *M'Arthur v Rintoul*, 30, 144.

Volunteer. *See ASSESSMENT III.*

Vote. *See FRANCHISE; also BANKRUPTCY IV. (b), ELECTION.*

Wager. *See also AGENCY III., CONTRACT I., DELIVERY.*

Stakeholder mandatory of bettors—Recall of mandate.—The pursuer, having collected stakes from sundry persons and included his own, handed the total to the defender, to be handed to the winner of a quoiting match. The match was not played out, but the defender paid the money away, though verbally interpellated. *Held* that the pursuer, as agent for the bettors, had a title to sue; and that, as there was nobody appointed to decide who won the match, and the Court would not decide that, the defender was liable to repay the amount to the pursuer. *Herd v Herd*, 25, 158.

Wakening. *See PROCESS IV.*

Warranty. *See AGENCY, INSURANCE, LEASE II., SALE III.*

Water Supply. *See ASSESSMENT I., PUBLIC HEALTH.*

Weights and Measures.

Pot of 13½ gills—Board of Trade standard.—*Held* that a vessel stamped “13½ gills,” and truly of that capacity, contained a multiple of the gill, an imperial measure of capacity and a Board of Trade standard, and that its use for trade did not infringe the prohibition in sec. 24 of the Weights and Measures Act, 1878, of measures not of the denomination of a Board of Trade standard. *Jameson v W. M.*, 29, 226.

Wife. *See HERITABLE OR MOVEABLE, HUSBAND AND WIFE, TITLE TO SUE.*

Winter Herding Act.

Intentional trespass under error.—*Held* that the Act did not apply to a case where sheep were driven on to enclosed parks by the shepherd of the owner of the sheep, under a mistaken idea that he had permission to put them there. *Camerons v Miller*, 23, 318.

Necessity of poinding animals—Whether intimation of trespass or taking of action must be immediate.—In an action for penalties under the Winter Herding Act, 1686, cap. 21, the trespassing sheep were not poinded, but early notice of the trespass was given. *Opinion* expressed that, as it was the defender's duty to have sufficient fencing, or to herd his beasts, the pursuer had only to prove the number of trespasses. *Question* whether such an action must be raised *de recenti*. *Mitchell & Sons v M'Millan*, 25, 240.

Witness. *See* CRIME, EXPENSES II.

Workmen's Compensation Acts.

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I. Employment, Misconduct.

Kind of employment—“Engineering work”—*Water pipe track intercepted by sewer—Notice*.—*Held* (1) that the due raising of proceedings in another Court (which were dismissed on ground of no jurisdiction) was sufficient and timeous notice under the Act; (2) that the incidental removing and re-laying of a sewer met with in the course of execution of a contract for laying a water pipe did not constitute an employment to which the 1897 Act applied. *Murphy v Blair & White*, 21, 193.

Course of employment—Seaman ashore for his own purposes.—*Held* that a seaman who fell from a ladder while he was going on board his ship was not killed by accident arising out of and in course of his employment, as he was ashore on his own business. *Fraser, &c. v Virginia Steamship Co., Ltd.*, 26, 102.

Course of employment—Workman leaving works by unauthorised route and killed.—A miner, who was going home from the pithead, instead of following the usual safe and provided track, went another way, and when passing some moving wagons slipped and received mortal injury from them. *Held* that his injury had not been received in the course of his employment, and that no compensation was due to those claiming in respect of it. *Hendry v United Collieries, Ltd.*, 26, 125.

Course of employment.—Fireman missing from ship at sea.—*Held* that a fireman who went amissing at sea from his ship, one with a low rail and at the time shipping heavy seas, had died by accident arising out of and in the course of his employment, and compensation awarded. *Jack v Biggart, Fulton, & Grier*, 26, 262.

Course of employment—Unpaid work after hours.—A moulder's apprentice's wages were paid about one o'clock on Saturday when his work hours were over. He had not been dismissed. Immediately after leaving the works he remembered that he had left in the workshop a tool, belonging to himself, and returned to get it. On his way back to the

Workmen's Compensation Acts: Employment, Misconduct—continued.

gate, about 1.20, he was asked by two labourers of the same employers to help in shoving a bogie loaded with castings. It was part of the pursuer's duty to render such help, and he gave it. The castings fell on him and injured him. *Held* that the accident arose out of and in the course of his employment. *Lambert v Stewart & Co.*, 26, 313.

Course of employment—Employee going home by unsafe route.

—A railway employee, after a day's special work, returned to the station where he usually got his orders, and chose to go home thence by his employers' railway, over which he had a pass. After reaching his home station he made for his house by crossing the rails, and was killed by a train running him down. *Held* that his employment for the day had ceased before the accident occurred, and compensation refused. *M'Leish v North British Railway Co.*, 27, 35.

Course of employment—Accident after employment injuring through circumstances of employment.—A gardener, living at a distance from his master's residence, on a Sunday morning fetched garden produce for the master's house from the garden. After he returned home, and while he was brushing his boots, he accidentally tore his thumb on one of the lacing hooks. Four days later tetanus supervened (probably owing to the state of his hands as a gardener), and proved fatal. *Held* that he died from a personal injury by accident, but that the accident did not arise out of and in the course of his employment, and that compensation was not due under the Workmen's Compensation Act, 1906. *Reid v Wilson*, 27, 307.*Course of employment—Accident aggravating latent disease.*—A workman met with a serious injury by accident in his work, and, being incapacitated for work, was found, some weeks after, to be affected by muscular disease of the heart, of which nobody was previously aware, which was not caused by the accident, and of which he died a year after the accident. *Held* in the circumstances that his dependants had proved that his death resulted from the accident, the disease of the heart having been materially aggravated by the injury, and were entitled to compensation. *Fettes, &c. v Rust & Son*, 28, 68.*Course of employment—Discharged workman injured while unpaid.*—A workman was instantly discharged for breach of a rule of the works forbidding workmen to visit a canteen during work hours, and was told to get his pay. This was in the morning, and, after ineffectual attempts to find the pay-clerk in attendance, the workman, slightly inebriated, accidentally fell and got hurt on the steep and winding road to the pay office within the works, in the afternoon. *Held* that the injury arose out of and in the course of his employment, that the accident was not attributable to his serious and wilful misconduct, and that he was entitled to compensation. *Sutherland v British Aluminium Co., Ltd.*, 28, 128.

Workmen's Compensation Acts: Employment, Misconduct—continued.

Course of employment—*Workman leaving the premises by an unauthorised route—Accident not on employers' premises.*

—A workman, going homewards from his employers' works, did not use the ordinary exit, but stepped over the boundary on to an unfenced private railway line, intending to go thereby on to neighbouring premises and across them to the public road, and was injured by wagons on the line. In a claim for compensation against his employers *held* that the accident did not arise either out of or in the course of the claimant's employment, and compensation *refused*. *O'Brien v Downs & Jardine*, 28, 206.

Course of employment—Domestic servant's unexplained fall.—

A domestic servant, who had just risen from her bed, slipped, and fell on the floor of her room. She had not come against any obstacle, and was unable to account for her fall. *Held* that the accident did not arise out of her employment, as it was not the result of any risk incidental to that employment. *Millar v Gilruth*, 29, 85.

Course of employment—Seeking foreman in dangerous place before working hours.—A plasterer who had been engaged at the defenders' office to begin work the following morning at a building in the course of erection, went to the building in the morning a few minutes before the hour for commencing work. Being anxious to have his work assigned to him by the foreman as soon as possible, he entered the building and went up an unlighted stair to reach the place where he assumed the plasterers' work would be. In the darkness his head came in contact with a projecting plank, and he fell from the unfenced stair to the floor below and was injured. It was proved that the employers always lighted a stair for the men, but the pursuer in ignorance had gone up by a different stair. *Held* that the accident did not arise "out of" the pursuer's employment. *M'Kenna v Rome & Co.*, 29, 266.

Misconduct—Intoxication resulting in injury.—A shipyard workman came drunk to the ship he was working on. His foreman dismissed him, and while he was leaving the ship he fell from a ladder and was injured. In his claim for compensation under the Workmen's Compensation Act of 1897, *held* that he was guilty of serious and wilful misconduct, and that his claim was bad. *M'Groarty v Brown & Co., Ltd.*, 22, 112.

Misconduct—Breach of rule—Pushing hutch into cageless shaft

—*Coal Mines Regulation Act, 1887, additional special rule No. 3.*—A bottomer in a coal mine, employed at a mid-working, opened the gate which fenced the shaft from the level, and, without ascertaining that the cage was there, pushed a hutch forward, and fell after it down the shaft. He had been previously warned against opening the gate when the cage was not at the level. *Held* that he was guilty of serious and wilful misconduct in acting as he did, and could not recover compensation under the statute in

Workmen's Compensation Acts: Employment, Misconduct—continued.

respect of his injuries. *George v Glasgow Coal Co.*, 24, 154.

Misconduct—Mine—Setting light near explosive—Coal Mines Regulation Act, 1887, additional special rule No. 1.—A miner, alone, required powder for blasting, and, in terms of the rule, set his naked light 6 feet distant, and across the roadway and rails thereon, from the powder store, which was a usual and previously a safe interval. The powder was exploded, and the man hurt. *Held* that there was no evidence of misconduct of the miner disqualifying him for the receipt of the statutory compensation. *Donaldson v Lochwood Coal Co., Ltd.*, 24, 319.

Misconduct—Mine—Breach of special rule under Coal Mines Regulation Act, 1887—Igniting explosive.—A miner, counting his charges of gunpowder, set his naked light in an airway, and brought some charges so near the light that sparks from it caused the charges in his hand to explode, and he was injured. A special rule, known to the miner, prohibited workmen from permitting a naked light in such a position that it would ignite an explosive. In an application for compensation, *held* that the workman had broken the rule and let the explosive ignite, and not having justified this breach was barred from compensation by his serious and wilful misconduct. *Donnachie v United Collieries, Ltd.*, 26, 24.

Misconduct—Breach of special rule—Disobedience—Coal mine.—The pursuer, employed by the defenders as a labourer, was ordered to assist a bricklayer in a mine, and was crushed by a cage descending on him at the pit bottom. He was told on the day of the accident, both by the pit bottomer and by the bricklayer, that he was to use the road round the pit bottom, and not to cross it by the cage seat or "needles," as he had tried to do. In passing the swing gates, which he had to open to enter the shaft and reach the needles, in disregarding the directions of the pit bottomer, and in going into the shaft where he knew danger to exist, the pursuer was in breach of the special rules established in terms of the Coal Mines Regulation Acts, and duly posted up at the mine. *Held* that the pursuer's injury was attributable to his serious and wilful misconduct, that the accident did not arise out of his employment, and that he was not entitled to compensation. *Fyfe v Glenboig Union Fireclay Co., Ltd.*, 29, 336.

Misconduct—Breach of express order.—The pursuer was employed as a pit labourer to attend to a coal washer and a dirt elevator, and to remove hutes from a point at some distance from a dross conveyor at the defender's colliery. He was specially warned by the defender's foreman to keep away from the dross conveyor. *Held* that in pulling the lever of the dross conveyor to put it in motion, wherein he was injured, he acted in breach of an express order and outwith the scope of his employment, and that the accident

Workmen's Compensation Acts: Employment, Misconduct—continued.

did not arise out of or in the course of his employment; and compensation refused. *Taverner v Cairns*, 30, 79.

Misconduct—Breach of rule—Crossing under train.—A brakeman, under the orders of a locomotive engine driver during shunting, generally coupled and uncoupled the railway wagons by a pole, but not infrequently passed under the wagons, with the knowledge and approval of the driver and fireman, if there were defects in the couplings or to work brakes on the other side of the train. He was never warned not to pass under wagons, and knew nothing of the regulation generally prohibiting this. A train failed to move when steam was applied, and he was ordered by the driver to go to the other side of the train to take off more brakes. He proceeded to do so by crawling between and under the buffers of two wagons, and while he was crossing the wagons moved and crushed his arm. *Held* that the accident arose out of and in the course of his employment, and compensation awarded. *Adams v Shotts Iron Co., Ltd.*, 30, 263.

Misconduct—Breach of rule—Workman entering mine road imperfectly fenced.—An oncostman in a coal pit was ordered to count rails during stocktaking. The fireman had informed him that all the roads were safe, but the oncostman was not aware of the abandonment of a side road in which he had been employed a short time before the accident. He knew he had no authority to enter a fenced road, but no notice prohibiting entrance was exhibited at this road, and some posts there were, he concluded, not intended to fence it. Assuming that it was included in the roads in which he had to count the rails, he proceeded, wearing a naked light, and was burned by an explosion of gas. *Held* that his injuries were incurred in his employment, and were not attributable to his serious and wilful misconduct by breach of rules or otherwise; and compensation awarded. *Ferguson v United Collieries, Ltd.*, 30, 285.

II. Employer.

Undertaker and contractor—Relief of claim.—Where a workman—injured while working for a plasterer, who had subcontracted for the plastering of buildings, over 30 feet high, and being constructed with scaffolding—sued for compensation the undertakers of the building, *held* that the plasterer might be cited, and his obligation to indemnify the undertakers might be settled by the Sheriff in the statutory arbitration, and this having been done of consent, he was *found* directly liable to the claimant for expenses. *Burns v Sutherlands*, 23, 273.

III. Workman.

Casual employment.—Circumstances in which *held* that a boot riveter, who alleged a contract of casual service with a bottle merchant, had not proved any contract of service,

Workmen's Compensation Acts: Workman—continued.

and was not entitled to compensation, being only a guest of the bottle merchant. *Wardrop v Donaldson*, 23, 347.

Ganger employing men—Contractor.—Where a man received accidental injury in his employment on the construction of a tramway, being a ganger entitled to employ his own men, but himself working with them and dismissible at will of the contractor's engineer, from whom he received his general orders and his tools, explosives, &c., held that he was not an independent contractor, but a workman within the meaning of the Workmen's Compensation Act of 1897, and entitled to compensation. *Mackintosh v Jackson, Ltd.*, 25, 144.

Member of employer's family.—*Held* that a son, employed by his father and residing with him, who sustained injuries in the course of his employment whilst working for his father at a place where he required to live temporarily in lodgings, was "a member of the employer's family dwelling in his house," and in virtue of sec. 13 of the Act of 1906, was not a workman entitled to compensation. *Macdougall v Macdougall*, 27, 23.

Thatcher on day's wages.—The proprietors of an estate engaged the pursuer, a thatcher, to repair roofs on the estate. He was to be paid at 8s. a day, and all materials were to be supplied by the proprietors, no time being fixed for the completion of the work. The pursuer did not receive any directions from the proprietors as to the method of doing the work, and no check was made of his time. The pursuer was injured by falling from a roof. *Held* that he was a workman within the meaning of the Act, and entitled to compensation. *Shearer v Carrick-Buchanan's Trustees*, 25, 5.

Workman contractor—Engagement to erect shed for a lump sum.—Circumstances where a person *held* to be an independent contractor and not a workman under the Act. *Spreull v M'Naughton & Co.*, 25, 53.

IV. Accident.

Death from disease beginning after injury sustained.—A workman was injured in the course of his employment. As a result of the accident his system was lowered, and about a month thereafter he contracted a slight cold, which caused an attack of bronchitis, from which he died. *Held* that the workman's death had resulted from the injury within the meaning of the Act, and that his employers were liable in compensation. *Tonner v Cassel Cyanide Co.*, 23, 9.

Drowning not accounted for—Nature of proof necessary to establish claim.—In an action at the instance of the parents of a workman found drowned near where he had been employed, it rather appeared that he had been discharged from his employment, and had been on the quay about his own affairs. *Held* that the facts to be proved by the pur-

Workmen's Compensation Acts: Accident—continued.

suers must not only be consistent with a theory, favourable to them, as to the circumstances under which the death occurred, but must point directly to an accident having arisen out of and in the course of the employment; and claim dismissed for want of evidence of employment and of accident. *Graham, &c. v Inglis, Ltd.*, 30, 311.

Heat stroke in street during errand.—A janitor of a school, while in the street on school business on a hot day, fell, owing to faintness or giddiness caused by the heat, and died of the consequences. *Held* that the fall was an accident in the course of his employment, but not arising out of it, and compensation refused. *Rodger, &c. v School Board of Paisley*, 28, 277.

Industrial disease—Certificate by surgeon.—*Held* that an application for compensation for injury from disease due to the nature of the employment was incompetent, where a certificate from a certifying surgeon had not been obtained in terms of sec. 8 (1) of the Act of 1906. *Dobbins v United Collieries, Ltd.*, 24, 3.

Industrial disease—Miners' nystagmus—Contracting disease within year before disablement—Act of 1906, sec. 8 (1) and (2), and Third Schedule.—A workman, holding a certificate that he suffered from nystagmus, due to employment in mining, in which he was engaged within twelve months before disablement, claimed compensation. *Held* that the Act did not require it to be established that the disease was contracted in an employment within the twelve months preceding the date of disablement. *Elsby v Baird & Co., Ltd.*, 29, 268.

Injury from mischief by strangers.—Where a workman (a hod-man engaged at the erection of a house) was injured by boys unconnected with his employment throwing stones, which landed in lime being mixed with water by the workman, and which splashed the lime into his eyes, *held* that the accident arose out of and in the course of the workman's employment. *Burns v Sutherlands*, 23, 273.

Injury not accounted for—Workman found dead—Onus of proof—No post-mortem examination.—Circumstances in which *held* that, although there was no post-mortem examination, the death of a workman, who was found dead at his working place, was due to an accident arising out of his employment. *Nevitt v Stewart & Co., Ltd.*, 27, 144.

Injury not accounted for—Onus.—A farm steward suffering from ruptures, when driving a sow had a relapse of a rupture, and strangulation afterwards set in. He was operated on, but died. In a claim by a dependant for compensation, *held* that there was nothing to show that the deceased had met with an accident, and that the claim was bad, as she had not discharged the burden of proving all the statutory conditions. *Walker v Murray, &c.* 27, 293.

Workmen's Compensation Acts: Accident—continued.

Latent disease—Sudden strain.—A workman engaged in severe toil, and affected (unknown to himself) by fibroid phthisis, over-exerted himself in order to go and aid in an emergency occurring near him, and burst a blood vessel in his lungs, by which his death was ultimately caused. *Held* that his death resulted from a personal injury by accident arising out of and in the course of his employment; and that in cases of accident consequences arising from the injured workman being affected by a latent disease are thrown by the statute on the employer. *Stewart v Ollendorff & Clarkson*, 24, 254.

Latent disease appearing after drenching.—A miner got a drenching by water from the roof of the mine while getting coal, and immediately thereafter complained of shivering, being a symptom that latent influenza had developed. After suffering from the influenza for some time he became insane. *Held* that there was no accident, also that the influenza was not proved to have been caused, or contributed to, by the drenching; and compensation refused. *Polland, &c. v Haughhead Coal Co.*, 30, 86.

Strain of work—Burst blood-vessel causing death—Onus.—A workman who had just knocked off from long-continued manual labour was found in a dazed state, and died two days afterwards of cerebral haemorrhage. It was not proved that the work caused the haemorrhage. *Held* that he had not died from an accident arising out of and in the course of his employment; and compensation refused. *Murison, &c. v Aberdeen Lime Co., Ltd.*, 27, 120.

V. Compensation and Procedure.—(a) Option of Remedy.

Assessment of compensation after decree of absolvitor in action at common law and under Employers' Liability Act, 1880—Act of 1897, sec. 1 (4)—Deduction of expenses from compensation.—An employer having been assailed from the conclusions of an action of damages for personal injuries at common law and under the Employers' Liability Act, 1880, the injured workman moved for an award of compensation under the Workmen's Compensation Act, 1897, sec. 1 (4). The Sheriff-Substitute refused the motion as incompetent before him; but held in an appeal that the workman could be found entitled to compensation even at that stage. The Court, under its discretionary power, deducted the expenses of the defender in the action raised in the Ordinary Court from the compensation awarded. *Hargadon v Steel*, 21, 112.

Assessment of compensation in common law action.—A workman's action against his employers for damages in respect of injury through their delict was held irrelevant before trial and dismissed, and a motion by the pursuer that compensation under the statute should be assessed was refused. *Observed* that sec. 1 (4) of the Workmen's Compensation Act of 1906 did not apply, as there had been no

Workmen's Compensation Acts: Compensation and Procedure—Option of Remedy—continued.

inquiry and so no determination that the employers would have been liable under the statute. *Miller v Gibson & Co.* 27, 168.

Compensation from employer—Damages claim against stranger.

—A workman, injured in his employment, received money through servants of his employers while he was disabled. He sued for damages a third party by whose fault he said his injuries were caused. Circumstances in which *held* that the payments were statutory compensation from the employers, that the workman received them knowing them to be such, and that he was barred by sec. 6 (1) of the Act of 1906 from recovering damages. *Tarres v Clyde Salvage Co., Ltd.*, 24, 337.

Principal contractor supplementing award against employer.

—The representatives of a workman killed by accident claimed at common law against the contractors who had subcontracted with his employers, and the contractors agreed, *ex gratia*, to make up to £250 any compensation awarded to the claimants as against the deceased's employers. *Held* that this agreement did not invalidate, under sec. 6 of the Act of 1897, the claim, arbitration, and award under the statute against the deceased's employers. *M'Quillan, &c. v Motherwell Bridge Co., Ltd.*, 23, 263.

Settlement with employer—Reservation of damages claim against another.—A workman who, in exercise of his option under sec. 6 of the statute of 1897, claimed from his employer compensation under the Act, *held* barred from making a claim of damages against any other person (converse of *Mulligan v Dick & Son*, 41 S.L.R. 77). *Coyle v Caledonian Railway Co.*, 24, 4.

V. Compensation and Procedure—(b) Enforcement.

Adjustment—Offer of work—Act of 1906, schedule 2, sec. 9 (b).—*Held* that a workman injured by accident and drawing compensation by agreement was entitled to record a memorandum to preserve his right to it, although he was offered work at his old wage in another sphere—his incapacity for his former work having been established. *Observed* that the offer of work, different in kind, not accepted, did not constitute a return to work at the same wages as before the accident, or an equivalent thereto. *Crane v Keanie*, 27, 351.

Agreement—Payment of “compensation” by third party—Personal bar.—Where the insurers of an employer paid an injured workman an allowance and took his receipts for “compensation” under the statute, but no agreement had been made, *held* that the employer was not barred from afterwards pleading against the workman's representative that he was not liable for compensation and that the injured man was not a “workman” in the sense of the statute. *Spreull v M'Naughton & Co.*, 25, 53.

Workmen's Compensation Acts: Compensation and Procedure—Enforcement—continued.

Protection from creditors—Payment by way of redemption—Arrestment.—The 19th section of the First Schedule to the Act of 1906 enacts that “a weekly payment” (of compensation), “or a sum paid by way of redemption thereof, shall not be capable of being assigned, charged, or attached.” *Held* that redemption money, plainly identified as a deposit receipt in bank in name of the injured workman, was protected from arrestment by this enactment, and that in a forthcoming with regard to it the defenders must be assailed. *Woods v Royal Bank of Scotland, &c.,* 30, 18.

Right to award when full wages being paid.—A workman injured in his employment, so as to be half-incapacitated, was retained in his employment and paid full wages. *Held* that he was nevertheless entitled to an award of compensation, and same assessed at half his weekly wage, deducting from the award the wages paid him *ex gratia*. *Fairbairn v Kay, &c.,* 26, 63.

Subrogation of workman in employer's insurance—Preference in employer's bankruptcy.—A workman claimed in the sequestration of his employers for statutory compensation amounting to £298, of which £100 should be preferred under sec. 5 (3) of the Workmen's Compensation Act of 1906. *Held* that, as the employers had an insurance policy in force at the date of the accident, their rights thereunder vested under sec. 5 (1) of the Act in the workman from the date of the bankruptcy, and under sec. 5 (5) the then existence of the policy (although the insurance office had become insolvent) prevented the compensation from being regarded as a preferential debt to any extent. *Rodgers v Walker,* 28, 53.

Suspension of charge on memorandum pending review.—*Held*, following *Lochgelly Coal Co. v Sinclair*, 1909, S.C. 922, that suspension of diligence to enforce payment of compensation due under a recorded memorandum was incompetent. *Opinion* that interim suspension, pending an application for review, was incompetent for the same reason, and because review of compensation was not retrospective. *Darnavil Coal Co., Ltd. v Johnstone*, 25, 228.

Suspension of charge on memorandum—Acquiescence in non-payment.—*Held* that a workman who, between 18th March, 1908, and 11th February, 1909, did not try to enforce his right to compensation had acquiesced in non-payment thereof during that period, and could not be allowed to charge therefor on a memorandum. *Glenboig Union Fireclay Co., Ltd. v Kennedy*, 26, 35.

V. Compensation and Procedure—(c) Memorandum.

Memorandum—Recording after lapse of time.—*Held* that, although its operation had been suspended for four years, a workman could insist on registration of a memorandum of

Workmen's Compensation Acts: Compensation and Procedure—Memorandum—continued.

agreement to pay compensation if he became again incapacitated after that lapse of time owing to the original accident. *Bell v Glasgow Corporation*, 24, 7.

Memorandum—Recording—Objection.—Where an injured workman and his employers have come to an agreement for his compensation during his total incapacity, and the workman has not returned to his work, and seeks to register a memorandum correctly stating the terms of the agreement, the employers are not entitled to prevent its being registered by asserting it is not genuine, but should apply to the Sheriff to get it ended, if they think the workman has recovered. *Fleming v Blackwood & Co.*, 24, 111.

Memorandum—Recording—Time for objecting.—When an employer had duly notified the Sheriff-clerk that he objected to the recording of a memorandum of agreement for compensation, thereby satisfying the requirement of sec. 11 of the Act of Sederunt of 26th June, 1907, but had not lodged a minute stating his reasons, as required by sec. 12, held that it was competent for the workman to present a minute craving an order on the Sheriff-clerk to record the memorandum, but that this did not preclude the employer from still lodging his minute, for which no time was limited by sec. 12. *Austin v Govan Ropework Co., Ltd.*, 24, 200.

Memorandum—Recording—Objections competent.—Held that the only competent objections to the recording by the Sheriff-clerk of a memorandum of compensation under the Workmen's Compensation Act were those mentioned in the second Schedule of the Act, sec. 9 (b) and (d), and that an objection merely that the workman was no longer incapacitated was incompetent. *Russell v North British Locomotive Co., Ltd.*, 24, 367.

Memorandum—Objection—No stated terminus of agreement—Obligation previously fulfilled.—An injured workman was paid compensation till his employers thought his incapacity had ceased, and he then presented a memorandum of agreement to be recorded, which did not state a period for which compensation was to be paid. Held that the memorandum was not "genuine," and registration accordingly refused. *Johnston v Addie & Sons' Collieries, Ltd.*, 24, 368.

Memorandum—Recording—Term for payment omitted—Incapacity ended.—Where an injured workman's incapacity had ceased, and he had received an agreed compensation till then, recording refused of a memorandum of agreed compensation from which the period during which payment should be made was omitted. *Lyons v Watson, Ltd.*, 24, 370.

Memorandum—Objection—Termination of incapacity before recording—Act of Sederunt, 26th June, 1907, sec. 12.—Held, on discussion of objections to the recording of a

Workmen's Compensation Acts: Compensation and Procedure—Memorandum—continued.

memorandum of an agreement to pay compensation during total incapacity to work, it was not a valid objection that total incapacity had ceased at the date of the presenting of the memorandum. Application for attaching conditions to the recording of an apparently spent memorandum refused. *Coakley v Addie & Sons' Collieries, Ltd.*, 25, 7.

Memorandum—Recording—“Total incapacity” in agreement, merely “incapacity” in memorandum.—Where a memorandum of agreement as to compensation to an injured workman, presented by him for registration, did not truly represent the agreement between him and his employer, inasmuch as it did not state that the compensation was to be paid during total incapacity of the workman, held that it could not be amended except of consent, which was not given, and therefore could not be recorded. *Boyd v Cooper*, 25, 37.

Memorandum—Recording—Sisting pending review.—Where a workman lodged a memorandum of compensation, to be recorded under the Workmen's Compensation Act, 1906, and thereafter his employers presented an application for review of the compensation on the ground that incapacity of the workman had ceased, the application to record was *sisted* to await the result of the application for review. *Allans v Monk*, 25, 44.

Memorandum—Recording—Objections by Sheriff-clerk.—Held, where it appeared *ex facie* of a memorandum of compensation under the Workmen's Compensation Act, 1906, presented to be recorded, that the amount agreed on was less than the amount allowed by the Act, that the Sheriff-clerk was entitled, *ex proprio motu* and without making any inquiry, to object by minute to the recording, so that the Sheriff's consideration of the matter might be invoked, and that the Sheriff might allow a claimant then to object by minute to the recording of the memorandum. *M'Math v Baird & Co., Ltd.*, 25, 113.

Memorandum — Objection — Simultaneous review — Act of Sederunt, 26th June, paragraph 12.—A workman having applied to the Sheriff-clerk to record a memorandum of agreement, and his employer having intimated to the Sheriff-clerk that he disputed the genuineness of the agreement, the employer *allowed* to lodge a minute in terms of paragraph 12 of the Act of Sederunt of 26th June, 1907; but *observed* that it was not a good objection to the genuineness of an agreement that the workman had recovered from the incapacity between the date of the agreement and the date when it was sought to be recorded, and that an employer who objected to the recording of an agreement on the ground that it was not genuine could not at the same time make application to have payments under the same agreement reviewed and ended. *Graydon v Kennedy*, 25, 135.

Workmen's Compensation Acts: Compensation and Procedure—Memorandum—continued.

Memorandum—Recording—Date for ascertaining workman's capacity.—*Held*, in an application by a workman for recording of a memorandum of agreement between himself and his employers as to compensation, that the point of time at which his capacity was to be considered was the date of the proof upon objections to the recording, and not the date of presenting the application. *Hanlon v Allan Steamship Co., Ltd.*, 25, 147.

Memorandum—Recording—Sisting pending review.—A motion tosist procedure in an application to record a memorandum of agreement as to a workman's compensation until the decision in a prior application for review refused as incompetent under the Workmen's Compensation Act, where no objection to the recording was sustained. *Thomson v United Collieries, Ltd.*, 25, 273.

Memorandum—Recording—Amendment.—Applicants for a warrant to record a memorandum of a workman's compensation, which was objected to as not genuine, allowed to amend the memorandum under rule 79 appended to the Sheriff Courts Act, 1907. *Campbell v Glasgow, Barrhead, and Kilmarnock Joint Railway Co.*, 25, 299.

Memorandum—Recording form.—Where a memorandum of compensation to a workman omitted the date of the agreement to give compensation, a particular required by form 1 of the schedule to the Act of Sederunt of 26th June, 1907, held that it could not be recorded. *Mickshunas v Addie & Sons' Collieries, Ltd.*, 26, 88.

Memorandum—Recording—Omission of duration.—A workman received compensation for a period of six months, and acknowledged the weekly payments on a receipt which accepted them "as the amounts payable during the period of total incapacity for work as the result of the accident." The workman returned to work, but later lodged a memorandum of agreement "that the respondents should pay compensation from the date of the said accident." Held, following the case of *Donnelly v Aikenhead Collieries, Ltd.*, 10th June, 1909, Second Division of Court of Session (unreported), that, as the memorandum omitted an essential term of agreement, warrant to record the memorandum must be refused. *Cairns v Carron Co.*, 26, 179.

Memorandum — Recording — Time for objecting — Act of Sederunt of 26th June, 1907, secs. 11 and 12.—Where employers, within seven days of intimation by the Sheriff-clerk to them of the presentation to him for recording of a memorandum of compensation, wrote him objecting to its genuineness, held that their detailed objections required by the above Act of Sederunt were in time when lodged as a minute in terms of sec. 12 in the arbitration which arose on the workman's subsequent application for warrant to record. *Mickshunas v Addie & Sons' Collieries, Ltd.*, 26, 88.

Workmen's Compensation Acts: Compensation and Procedure—Memorandum—continued.

Memorandum—Recording—Objections containing application to review.—*Held* that respondents in their objections to the recording of a memorandum of agreed compensation were entitled to crave that the claimant's compensation should be ended or diminished. *Leddy v Baton Collieries, Ltd.*, 28, 145.

Memorandum—Objection—Superseding extract when workman partially recovered and working.—An apprentice, who had been receiving compensation for an injury, presented a memorandum for registration, after he had at least partly recovered, compensation had been stopped, and he had been doing some work. His employer objected, on the ground that complete recovery had taken place, but that was not proved, and the claimant led no evidence at all. To provide for the event of supervening incapacity the Sheriff granted warrant for recording the memorandum, but *superseded* extract till further order of Court. *Norton v Kirk*, 30, 156.

V. Compensation and Procedure—(d) Claim and Arbitration.

Jurisdiction—Service on shipmaster.—An application for recovery of workmen's compensation was directed by the pursuer, a seaman injured at sea, against the shipowners only, who were foreigners, but he served his application on the shipmaster, then in his ship within the jurisdiction. *Held* that the Sheriff as arbiter had no jurisdiction over the foreign owners, and that the defect of jurisdiction was not cured by mere intimation to the master as prescribed by the Act of Sederunt of 26th June, 1907, sec. 4 (3) (a), and application dismissed. *Manderson v Woods, Taylor, & Brown*, 30, 49.

Procedure—Claim—Form of writ for initiating arbitration—Sheriff Courts Act, 1907.—*Held* that a workmen's compensation case brought in the form of initial writ provided by the Sheriff Courts (Scotland) Act, 1907, need not be dismissed as incompetent; but *opinion* that the form prescribed by the Sheriff Courts Act of 1876 was the proper form. *M'Gill v Spencer & Co.*, 24, 102.

Procedure—Claim—Forms of initial and subsequent applications—Sheriff Courts Act, 1907, rule 1 and form A.—*Held* that an application for review of compensation to a workman, fixed by agreement prior to January, 1908, need not necessarily take the form of an initial writ under the Sheriff Courts Act, 1907. *Opinion* that an application to assess compensation under the Workmen's Compensation Act, 1906, must be by initial writ under the Act of 1907. *Cochran v M'Vean*, 24, 105.

Procedure—Claim—Form of initial application—Sheriff Courts Act, 1907, rule 1 and form A.—An application under the Workmen's Compensation Act, 1906, brought in the form of an initial writ, in terms of the Sheriff Courts (Scotland)

Workmen's Compensation Acts: Compensation and Procedure—Claim and Arbitration—continued.

Act, 1907, held incompetent, in respect that the Workmen's Compensation Act provides for claims being enforced in an arbitration and not an action, and refers expressly to the form of petition (with condescendence and *pleas* in law) required by the Sheriff Courts Act of 1876. *M'Quade v Summerlee and Mossend Iron and Steel Co., Ltd.*, 24, 107.

Procedure—Claim—Form of petition—Sheriff Courts Act, 1907, first schedule, rule 1.—Held that an application to assess compensation under the Workmen's Compensation Act, 1906, must be by initial writ in the form prescribed by the Sheriff Courts Act, 1907. *Trimble v Stewart & Shaw*, 24, 173.

Procedure—Claim—Form of initial application—Sheriff Courts Act, 1907.—An application under the Workmen's Compensation Act, 1906, brought in the form of initial writ in terms of the Sheriff Courts Act, 1907, held competent. *Clark v Grangemouth Iron Co.*, 24, 185.

Procedure—Claim—Form of initial application—Competency of pleadings.—Held that an application to the Sheriff for an award of compensation under the Workmen's Compensation Act of 1906 must be in the form of initial writ scheduled to the Sheriff Courts Act of 1907, and that, as it was a "summary application," or an application "to be heard, tried, and determined summarily," no further pleadings were competent, sec. 50 of the latter Act forbidding them. *Maclean, &c., v Bullough*, 27, 264.

Procedure—Medical examination for employer—Industrial disease.—Held that the obligation of an injured workman under sec. 4 of schedule I. of the Act to submit himself to examination by the employer's medical man is general, and is applicable in the case of an industrial disease; and insist of a workman's application granted till he should submit himself to such examination. *Gardiner v Brand & Son*, 26, 23.

Procedure—Medical examination—Schedule 1, paragraphs 4 and 20.—In an application for an award of compensation the defenders pleaded that, the pursuer having refused to submit to medical examination or obstructed it, his right to compensation and to prosecute the present proceedings should be suspended until such examination had taken place, in terms of paragraphs 4 and 20 of the First Schedule to the Workmen's Compensation Act, 1906. Circumstances in which this plea was repelled *in hoc statu*, and cause appointed to be enrolled for further procedure. *Anderson v Summerlee Iron Co., Ltd.*, 29, 359.

Procedure—Notice—Prejudice to employer—Reasonable cause for delay.—A workman, whose eye was injured at work in August, 1908, in June, 1912, claimed compensation. Circumstances in which, though he had medical advice at

Workmen's Compensation Acts: Compensation and Procedure—Claim and Arbitration—continued.

intervals from the beginning of the period, he gave his employers no notice till just before arbitration, and was held not to have proved reasonable cause for the delay in giving it, or absence of prejudice to his employers, and claim refused for want of due notice. *Milne v Hislop, Wilson, & Co.*, 29, 262.

Procedure—Trial.—Held that the proceedings under the Act are to be conducted according to the recognised procedure rules of the Sheriff Court, notwithstanding that the Sheriff is nominally an “arbitrator.” Further proof refused after evidence had been led and parties heard on a claim for compensation. *Baird v Forsyth, Miller, & Co.*, 22, 156.

Procedure—Trial—Claimant's failure to appear at proof—No accident.—Where a workman, alleging injury in the course of his employment, instituted a statutory arbitration against his employers, but did not appear at the diet fixed for proof, the defenders were held entitled to lead their evidence at the diet so fixed, and, having proved that there was no accident, were assuited from the claim. *Farrell v Henderson & Co., Ltd.*, 25, 216.

V. Compensation and Procedure—(e) Dependants.

Mother—Illegitimacy of workman.—Held, where a woman could prove (1) her relationship to and (2) her dependency upon the earnings of her illegitimate son, killed by accident in his employment, that she was entitled to compensation, and that the legal responsibility of the woman's husband for her support did not affect this right; but that the fact of the husband's contributing to her support resulted in her being only partially dependent on her son, and involved modification of the amount payable. *Crookston v Coltness Iron Co., Ltd.*, 25, 215.

Partial dependant—Proportion of compensation.—Where a workmen was killed in his employment, and had contributed to his father's maintenance to the extent of about two-fifths of the father's livelihood, held that the father, as a partial dependant of the son, was entitled to two-fifths of three year's wages of the son. The son's burial expenses, paid by the employers, were deducted. *Leonard v Casey & Darragh*, 24, 15.

Partial dependence—Common family fund.—Held, where a son, living at home and contributing to the common family fund, was killed in his employment, that his father was at the time of his death dependent upon him to the extent of the excess of the son's contributions over the cost of his share of board and lodging; and that compensation, “reasonable and proportionate to the injury,” was 156 times the weekly excess. *Main Colliery v Davies*, 1900 A.C. 358, followed. *Spalding v Bell & Turnbull*, 25, 88.

Workmen's Compensation Acts—continued.**V. Compensation and Procedure—(f) Adjustment.**

Amount—Excess payments made by employers claimed to be deducted—Schedule 1, sec. 2.—Circumstances in which compensation was awarded from a certain date, without excess payments by the employers during previous incapacity being taken into account. *Douglas v Charteris, Spence, & Co., 22, 297.*

Amount—Calculation of earnings—Break in employment.—*Held* that, although a miner was absent from work for four days through a dispute between him and his masters, there was no break in the employment such as to affect the period for computing his earnings with a view to compensation. *Steele v United Collieries, Ltd., 23, 49.*

Amount—Actual wages, &c., or wages on statutory calculation.—A coal trimmer agreed with shipowners to work his passage from Buenos Aires home to Glasgow, at the wage of 1s. per month, with board and clothes. He was injured while at work, and claimed compensation. *Held* that he was entitled to it on the basis of his contract, and not of a calculation in terms of sec. 2 (a) of the first schedule to the Workmen's Compensation Act of 1906. *M'Dowall v Allan, Brothers, & Co., 26, 113.*

Amount—Average weekly earnings—Irrregular employment—Service with others—Absence due to unavoidable cause—Schedule I. (2) (a) (c).—A farm labourer was in the employment of a farmer off and on for about three years prior to an accident arising out of and in the course of his employment, which, at least for a time, totally incapacitated him. He was paid by the day, and his wages, like the wages of other farm labourers employed in the district, fluctuated between 3s. and 4s. per day. Out of the fifty-two weeks preceding the accident he was employed by the farmer forty-one weeks and part of a week. In the ten weeks during which he did not work for the farmer he was employed by other farmers in the district, but there was no evidence as to how much he actually received from them. *Held* that the pursuer's absence from his employment with the farmer, when he was working with the other farmers, was "due to illness or any other unavoidable cause," and that his average weekly earnings during these weeks were at the rate earned by a person in the same grade in the same class of employment and in the same district, viz., the rate earned from the defender, and consequently that the manner best calculated to give the rate per week at which he was being remunerated was to divide his real and reputed earnings in the defender's employment for the fifty-one full weeks by the number of weeks in which he was employed by the defender, viz., fifty-one, the interrupted week during which the accident happened being disregarded. *Carter v Lang, 1908, S.C. 1198, applied. Burke v Stirrat, 27, 279.*

Amount—Effect of antecedent disease increasing incapacity.—A workman received an accidental injury to the right eye

Workmen's Compensation Acts: Compensation and Procedure—Adjustment—continued.

which materially reduced his power of vision in that eye, and at the time of the accident suffered from disease in his left eye, by which the sight of that eye was then deficient. *Held* that the deficient vision in the left eye at the time of the accident to the right eye was to be taken into account in gauging the extent of the resultant incapacity; but that, though the sight of the left eye might still deteriorate, any further deterioration was to be disregarded, as it arose from causes unconnected with the accident. *Gaffney v Scottish Co-operative Wholesale Society, Ltd.*, 27, 318.

Amount—Eye destroyed and loss obvious.—A blast furnaceman's left eye was so injured by accident in his employment that it had to be removed. He received full weekly compensation for a time, and when the part was healed his employers applied for review of the amount. *Held* that the loss of the eye being obvious, it would be difficult for the workman to obtain employment; and in respect it was proved how far his value in the labour market was thus depreciated, partial compensation awarded of 10s. per week. *Summerlee Iron Co., Ltd. v Mullen*, 29, 101.

Amount—Loss of eye by blacksmith.—The pursuer, a minor, was a blacksmith, and met with an accident to his left eye, which was excised. *Held* that the defenders, his employers, were liable in partial compensation for a period of three months from the date that the socket of the pursuer's excised eye had healed, after which period his incapacity had ceased; and compensation ended thereafter. *Culley v Baird & Co., Ltd.*, 30, 81.

Amount—Workman learning new trade after recovery.—A blacksmith, who lost an eye at his trade, but recovered his capacity for it, elected not to resume his work, and obtained employment as an electrical engineer, at a less wage. *Observed* that to grant him compensation after recovery, while he was learning the new trade, which involved less risk to his remaining eye, would be unjust to his former employers. *Culley v Baird & Co., Ltd.*, 30, 81.

V. Compensation and Procedure—(g) Review.

No memorandum recorded.—*Held* that an application by employers for review of payments which had been made by them voluntarily to an injured workman, who had not recorded a memorandum of agreement relative thereto, and which they had stopped, was incompetent, in respect that they were not "weekly payments" in the sense of the Workmen's Compensation Act, 1906, having in fact ceased, and having never been statutory payments, which alone were subject to review. *M'Alpine & Sons v Smith*, 24, 380.

No memorandum recorded—Reduction from date prior to judgment.—*Held* that, in reviewing the weekly payments

Workmen's Compensation Acts: Compensation and Procedure—Review—continued.

made under an agreement, where no memorandum had been recorded and no arbitration had taken place, it was competent to reduce the payments as from a date prior to the date of the interlocutor. *Cooper v Boyd*, 25, 39.

No memorandum recorded—Form of application.—*Held* (1) that review of an unrecorded agreement to make weekly payments of compensation to a workman is competent, and (2) that the application for such review is properly by petition and not by minute. *Allans v Monk*, 25, 44.

No memorandum recorded—Payments stopped.—An employer having ceased to make weekly payments to a workman under an unrecorded agreement, and having subsequently presented a petition under sec. 16 of the first schedule of the Act of 1906 to have the weekly payments reviewed and ended as at the date when he ceased to make them, *held* that the provisions of the section applied only to payments actually being made in terms of the statute at the time of the application for review, and that the petition was therefore incompetent. *Graydon v Kennedy*, 25, 135.

No memorandum recorded.—*Held* competent to apply to the Court to review and end weekly payments made to a workman under an agreement, although no memorandum of the agreement had been recorded. *Allan Steamship Co., Ltd. v Hanlon*, 25, 148.

Procedure—Concurrence of old age and injury—Proof of restored capacity.—An active workman, sixty-six years of age, was seriously injured by accident in his employment. Although five months after the accident the injuries had healed, the combined effect of his age and the injuries rendered him no longer able for his former work of railway porter. In a petition to end or diminish compensation payable under a statutory recorded memorandum, *held* that the employers had not shown that his incapacity for his work had ceased or that the compensation should be varied. *North British Railway Co. v Nichol*, 24, 361.

Procedure—Application to end compensation—Subsequent presentation of memorandum to be recorded.—Where, after employers had applied for the ending of a workman's agreed compensation, the workman presented a memorandum of compensation to be recorded, *held* that the two should be considered together, and recording insisted; and, on the evidence, a declaration that the obligation to pay compensation was ended *pronounced*, with expenses to the employers. *M'Govern v M'Alpine & Sons*, 25, 252.

Procedure—Effect of presenting application.—In a suspension of a charge for payment of a workman's compensation accruing under a recorded memorandum, *held* that compensation could not be exacted after the date of an application by the employer for review and ending of the compensation, and charge suspended. *Duncansons v Carson*, 26, 60.

Workmen's Compensation Acts: Compensation and Procedure—Review—continued.

Procedure—Remit to original arbitrator—Act of 1906, sec. 1 (3)

—Act of Sederunt, 26th June, 1907, sec. 9.—An application for review of the weekly payments to an injured workman was brought before Sheriff-Substitute X, while Sheriff-Substitute Y (the original arbitrator) was available. The workman's agent moved that the application be remitted to the original arbitrator. Motion *refused*. *Held* that a fresh arbitration was initiated by the application for review, and that it was not expedient to remit it to the original arbitrator. *Burns v Sutherland*, 28, 89.

Procedure—Specification of workman's restored capacity.—

Where review of compensation was sought by employers in a minute stating, in general terms, that the workman's incapacity was at an end, an *objection* that the minute was irrelevant because of want of specification as to the workman's capacity for work *repelled*, and a *proof allowed*. *Shotts Iron Co., Ltd. v Connor* 29, 274.

Refusal to use remedies.—Where a female field worker, after fracture of her collar bone, &c., and general recovery, declined, from nervousness and fear of pain, to exercise the injured parts, which would have completed recovery, her compensation was *ended*, after delay enough to have allowed for recovery. *Cuff v Scott*, 26, 203.

Return to full wages.—An irondriller some time after a permanent injury to one of his eyes earned in good faith more than his wage was before the accident. In an application by his employers for review of the compensation paid to him during his incapacity, *held* that the compensation must be ended. *Brown & Co., Ltd. v Hamilton*, 22, 303.

Return to full wages.—Compensation awarded under the Workmen's Compensation Act to a workman, a minor, in respect of injury which resulted in the total loss of his left eye *ended*, where it was proved that he was able to earn as much as if he had remained uninjured. *Peffers v Kinghorn Bottle Co., Ltd.*, 27, 349.

V. Compensation and Procedure—(h) Expenses.

Application of Ordinary Court table.—*Held* (1) that an arbitration for fixing compensation under the Workmen's Compensation Act, 1897, was a summary process in the Ordinary Court, and that the Sheriff Court table of fees of 1878, so far as applicable, was the basis for an account of expenses therein; and (2) that, where the award was a payment continuing for an indefinite time, the expenses fell to be taxed on the higher scale. *Ross v North British Locomotive Co., Ltd.*, 23, 67.

Appeal on objection.—In an application for compensation in respect of the death of a workman the Auditor allowed a certain fee to a certified medical witness for the pursuer,

Workmen's Compensation Acts: Compensation and Procedure—Expenses—continued.

and the defenders objected. The arbiter (Sheriff-Substitute) sustained the objection in part, and the pursuer appealed to the Sheriff-Principal. *Held* that the appeal was incompetent under the Workmen's Compensation Act. *M'Kinstry v Plean Colliery Co., Ltd.*, 27, 62.

Appeal—Discretion of Sheriff—Schedule II., paragraph 7.—An injured workman applied for registration of a memorandum of agreement as to compensation, and his employers applied for review and ending or diminishing of the compensation paid by them. The two applications were regarded as one proceeding. The employers got the compensation reduced from 12s. 2d. to 6s. 4d. a week, but the full expenses of the workman's opposition to their application were awarded against them. They appealed by way of stated case against this award, but the appeal was dismissed. *Gaffney v Scottish Co-operative Wholesale Society, Ltd.*, 27, 318.

Claimant's agent applying for award from compensation—Act of 1897, schedule 2, sec. 12.—*Held* (rev. Sheriff-Substitute) (1) that a motion by the claimant's law agent under sec. 12 of the second schedule to the Workmen's Compensation Act of 1897 was incompetent without notice to the parties in the arbitration, and especially to the claimant; (2) that an award under the said section was only competent on the application of either party to the arbitration; and (3) that it was incompetent to charge compensation awarded under the Act with the costs of law agency in an action not brought under the Act, though compensation in terms of the Act was awarded in the action. *Mowat v Peter*, 23, 25.

Claim over £50—Award under £50—Act of Sederunt of 10th April, 1908, sec. ii. (1).—Where the crave of the petition was for continuing payments, apparently amounting to more than £50, and no party asked the Sheriff for a direction to the auditor fixing the scale on which the account of the claimant's expenses was to be taxed, *held* that the higher scale was applicable. *Tormey v Baird & Co., Ltd.*, 28, 337.

Medical witness's fee for examination.—*Held* that, whilst the Sheriff Court table of fees applied to a process under the Workmen's Compensation Act, a medical witness was not entitled to an extra charge under the table of fees (beyond his scheduled allowance) for examining a person to qualify himself to give evidence as to whether that person's incapacity for work had ceased. *Cochrane v M'Vean*, 24, 280.

Scale of taxation—Memorandum objected to.—In an application to grant warrant to record a memorandum of agreement as to compensation, in which the employers objected solely to its genuineness, and were successful and found entitled to expenses, they were *held* barred from objecting to the Auditor's taxation on the lower scale, owing to their long

Workmen's Compensation Acts: Compensation and Procedure—Expenses—continued.

delay in presenting their account for taxation. *Observed* that the objection to the memorandum did not affect the amount awarded, and that the employers ought to have got the Sheriff's directions as to the scale under either General Regulation V. of the Table of Fees, or rule 84 of the Sheriff Courts Act of 1907. *Hannan v Glasgow Coal Co., Ltd.*, 29, 140.

Writ. *See also BANKRUPTCY II., IV. (b), BILL OF EXCHANGE, EVIDENCE, I O U, LOAN, PARTNERSHIP, PRESCRIPTION I., II., RIGHT IN SECURITY, SHIP V.*

Authentication—Witness signing will before testator signed—Testator's signature afterwards acknowledged—Sheriff—Conveyancing Act of 1874, sec. 39.—Where A wrote out a will for B, signed it as a witness opposite where the grantor's signature would go, and left it with B, who next day signed it before another witness (who signed), and still later acknowledged his subscription to A, *held* that the effect of the informality of execution had been explained away by proof of the circumstances under sec. 39 of the Conveyancing Act, adduced before the Sheriff-Substitute in an application for confirmation of the executor nominated in the will. *Faruharson v Neish*, 26, 139.

Authentication — Testament — Notarial execution — Part of notary's docquet written on an erasure—Confirmation.—Where the docquet of a justice of the peace who executed a codicil for the testator contained erasures and words written over them authenticated by his initials, but the objectors to the deed failed to show that its effect was materially altered, *held* that confirmation must be granted to those proponing the deed, leaving the objectors their remedies elsewhere than in the Commissary Court. *Jarvis, &c. v Sim, &c.*, 27, 97.

Holograph—Proof of date—Antenuptial deed of gift.—Where a husband realised heritable bonds after his marriage, and in respect, as was alleged, of an antenuptial holograph deed of gift delivered the proceeds to his wife, *held* that the alleged writ did not prove its date as against the husband's creditors, and proof of the date *refused* in the absence of averments of adminicles or of specific circumstances in support of its date and delivery. *Wood v M'Intyre*, 27, 112.

Improbative letter granted along with bill for loan—Res mercatoria.—A letter of agreement, stipulating a high rate of interest payable on the amount of a bill granted as a voucher for a loan if not paid when due, *held* valid and binding, although neither holograph nor tested, being *pars ejusdem negotii*, and entitled to the same privileges as the bill *in re mercatoria*. *Robertson v Levenson, &c.*, 21, 221.

Writ—continued.

Improbative writ—Signature denied—Onus of proof.—Circumstances in which the pursuer alleged that the signature to an improbative writ was not his, and held that the onus lay on the defenders founding on the writ to prove his signature, and was not discharged. *Millar v Prudential Assurance Co., Ltd.*, 29, 163.

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